

Tryals for high-treason, and other crimes with proceedings on bills of attainder, and impeachments, for three hundred years past, to which are prefix'd a preface, giving an account of the nature and usefulness of the work and an alphabetical table of the respective persons try'd, and the
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TRIALS

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WITH

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AND

An ALPHABETICAL TABLE of
the respective PERSONS Try'd, and the
Points of Law Debated and Adjudg'd.

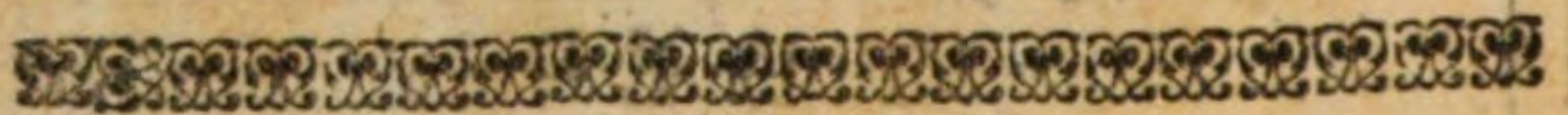
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Edition for the PRESS.

IN SIX PARTS.

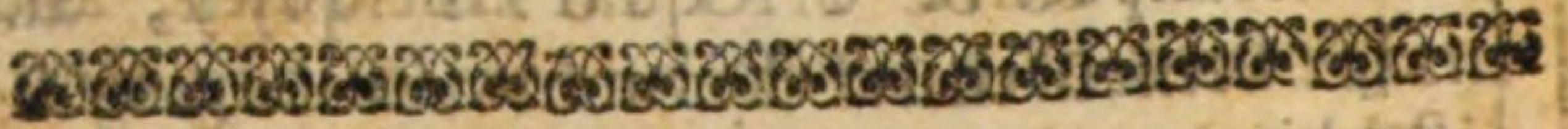
PART I.

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THE PREFACE.



VERY Nation, every Society seems possess'd with a sort of Bigotry for their particular Laws and Customs, and are apt to entertain insuperable Prejudices against every Institution but their own.

The Civil Law, which has obtain'd in so many Ages, and so many Nations, is look'd upon by our Common Lawyers as a very defective System: On the contrary, the Common Law, which Sir *Edward Coke* holds to be of equal Antiquity, and under which this Nation has so long flourish'd, the Civilian charges with a Multitude of Absurdities.

I make no Difficulty in admitting that other Nations may have received as equitable Precepts as our own. What we excel them in, and which seems to be the

Foundation of our Liberties, is the manner of applying and administering the Laws in *England* in that excellent Method of Tryals by Juries.

In vain would the People share in the enacting our Laws, if the Construction and Execution of them were not in a great Measure also vested in them. Were we left, as in other Nations, entirely at the Mercy of one who is a Creature of the Court, the Laws intended for the Protection of the Subject would too often be wrested to his Destruction.

But here the Party accus'd has twelve of his impartial Neighbours to skreen him from the Injustice of a corrupt or incens'd Ministry ; who, if they find the Court bear hard upon the Prisoner, may take the Law as well as the Fact upon themselves, and acquit him by a general Verdict.

Of this great Privilege we can never be too tenacious ; we can never set too great a Value upon it ; for from this Source arise that Liberty, Property, and consequently Plenty, which distinguish us from the neighbouring Nations.

During the Usurpation, while this Part of our Constitution was left us, Mens Lives and Liberties were in tolerable Security ; but this prov'd such an Obstacle
to

The P R E F A C E.

to the Designs of the Usurpers, that they were forc'd to abolish it, and set up a Mock Tribunal of their own Creatures in the Room of it, before they could establish themselves. For altho', while Party run high, and Mens Passions were whetted by Opposition, the Country were made accessory to the Death of many a brave Man ; yet when they began to cool, and found they had been forging Shackles for themselves, they could no longer be prevail'd upon, by Force or Flattery, to become their Tools ; as was observable in the Tryal of *John Lilburne*, who was twice acquitted, notwithstanding all the Arts that were us'd by the then Power to destroy him.

But how great soever this Privilege is, and of how much Importance soever to be well understood by every *English* Gentleman, we find them miserably defective in this sort of Learning.

We see Gentlemen of Parts and Education, who would be asham'd to be found ignorant in the Manners and Customs of *Old Rome*, or those of foreign Nations, at this Day, when 'tis their Misfortune to be brought before a Court of Justice, in the utmost Confusion. They are utterly at a Loss how to manage their Defence ; and their usual Apology is, They little thought of appearing at the Bar as Criminals. But

who can promise himself an Exemption from Criminal Prosecutions, especially in a Kingdom where the contending Parties pursue each other with that Violence, and where the Government is said to be founded on Revolution Principles, and we have in Fact experienc'd so many Revolutions?

Indeed, the World seems conscious of their Neglect of this Reading by that quick Sale of the *Folio* Edition of Tryals; but it was easy to foresee that a Book of seven Guineas Price would be too large for many private Studies. I consider'd therefore, while I was preparing the *Folio* for the Press, how this Piece of useful Learning might be more universally communicated; and finding the Formalities in every Proceeding, which were usually the same, took up abundance of Room; and that the Evidence, as well as the Arguments, were repeated four or five times in many Tryals, I set about contracting the Work to a more moderate Size.

And that this is very possible to be done, without cramping or abridging the Sense, will appear from an Instance or two. As where a Prisoner makes thirty five peremptory Challenges, what tolerable Reason can be assign'd for repeating thirty five times the Words, *I challenge him*? Does it not give equal Satisfaction, and save a great

great Expence of Time and Paper, to say, *That the Prisoner challeng'd Thirty five peremptorily?* Indeed where there is a Cause of Challenge shewn, it never is or ought to be omitted.

Again, tho' there may be some Colour for repeating and enforcing the same Evidence and Arguments half a dozen times at a long Tryal, I appeal to any Gentleman who has read a Tryal, if those Repetitions in Print do not create a Weariness and Disgust, and induce him to turn over many Pages unread, whereby perhaps he slips some things that might very well deserve his Attention. I remember a young Council, who desiring to add a Word or two at a certain Tryal, after the Matter had been fully debated by his Seniors; and the Court giving great Attention to what he was about to advance, he only repeated what had been said very often before in much the same Words; whereupon a grave Serjeant reply'd, *Sir, You have said something, but you have added nothing.* Now though this young Gentleman might conceive his Clients requir'd thus much at his Hands, yet if I had taken the Tryal, and omitted every Tittle of that Speech, I should not have called it an Abridgment of the Tryal: And so as I make my Reader Master of the respective Arguments, and the Evidence, I don't apprehend he

a 4

will

will be any great Loser, if he does not find them repeated in every Speech.

I would by no Means detract from the Value of the larger Work : It is absurd to think I should, having prepar'd both for the Press ; each has its peculiar Excellence. There the Reader has all the Formalities in the respective Proceedings ; here he has the Arguments exclusive of those Formalities, and of the Repetitions ; and things are laid together and reduc'd into Order, that were often deliver'd in much Confusion : And where any Passages are obscure, as they are sometimes in the Original, they are clear'd up, and explain'd by Marginal Notes ; and the Purchaser is sav'd a considerable Expence ; the Price of this not being above a fifth of the other. Indeed, the Reader must relie a little upon my Judgment ; but the Page of the *Folio* Edition being plac'd in the Margin of this, I may be very easily corrected ; and I shall take it as a Favour to be advertis'd of it, when the Reader apprehends I have mistaken the Sense. For though I had a great Opportunity of weighing the respective Arguments, while I prepar'd the *Folio*, 'tis very possible in so voluminous a Work some Mistakes may happen ; but from all wilful ones, and from every thing that looks like Partiality,

tiality, I do not doubt to acquit my self.

But I foresee the Reader will sometimes apprehend we are defective, or mistaken, when indeed we are not, I mean where we have defective Originals: And if it be ask'd why we bound up any such in the *Folio*; I answer, they were the best that could be procur'd, and even such Accounts have their Use; and we should not have been forgiven if we had omitted them.

And as the World seems dissatisfied that we left *Hampden* in the Case of Ship-Money, and *Rushworth's Strafford*, out of the *Folio* Edition, they are both added here, together with the Tryal of *Francia* (commonly call'd the *Jew*) in which we have a pretty good Account of the *Preston* Business. And give me Leave here to observe, that there is a Thread of History runs through the Tryals, whereby the Reader will be inform'd of all the great Events that have happen'd in the two last Centuries; and will be able to form a Judgment of them himself, without relying entirely on the Capacity or Fidelity of our Historians on either side.

Beside

Beside such as are properly *State-Tryals*, are intermix'd a great Variety of others, viz. for *Heresy, Rape, Sodomy, Murder, Parricide, Burglary, forcible Marriage, Bigamy, and Misdemeanor.*

As to the *ordinary Tryals* for *Witchcraft* (an Offence so zealously prosecuted heretofore by our Ancestors, and our Northern Neighbours at present) we could not meet with one that deserv'd a Place in this Work; and the Tryal of *Hathaway* sufficiently shews the Credit which ought to be given *generally* to the Evidence in those Prosecutions.

There are also in these Volumes several remarkable *Scots Tryals*, and particularly that of *Robert Baillie of Fervistwood*, which contributes much to the understanding the *Rye-house-Plot*, and my Lord *Russel's*, and *Sidney's Tryals*; as that of *Otes* for Perjury does to the understanding the *Popish-Plot*.

From what has been already hinted, it sufficiently appears, that these Tryals are not only proper for Lawyers, but for every Gentleman who would understand the History or Constitution of his native Country. And as a further Recommendation

dation of them, give me Leave to add, that the Reader will here find collected all the Arguments relating to the Prerogative of the Prince, and the Liberty and Property of the Subject, whatever has been advanced by the Advocates of Resistance on one side, and those of Passive-Obedience on the other.

Many Attempts he will observe towards settling Government upon some fix'd and solid Basis : But great Inconveniences seem still to arise in placing the *Dernier Resort* either in the Prince or People ; Tyranny is dreaded on one hand, Anarchy on the other. And those who think they have dissolv'd the Knot, when they tell us, the Law is the Measure of our Obedience, find the Question recur, *Who shall be Judge ? Who shall interpret this Law ?* And 'tis very obvious in these Tryals, that where ever Power is, it seldom fails to make the Law subservient to it.

Beside these Lectures of Politicks, what will render this Reading extremely entertaining, is that infinite Variety of Tragick Scenes. Not fictitious, fram'd only to amuse and please, of which our *English* Gentry seem so fond, but such as are supported by uncontested Truth, and

and have a Tendency to polish and improve them.

It has been long since observ'd, That there is not a more glorious Object than a good Man struggling with adverse Fortune ; That Virtue never shines so bright as in Distress : And of this we have numerous Instances here. We may see Gentlemen in Defence of their lawful Princes, or of the Rights and Liberties of their Country, who might have remain'd at Ease in their Possessions, if they could with Patience have beheld their Country's approaching Ruin. We see them exposing themselves, their Fortunes, and their Families, to all the Rage and Fury of an incens'd Tyrant or Usurper.

And though the Consideration that he has done his Duty, and thereby engaged Providence on the Behalf of his distressed Family, may greatly support the dying Hero ; yet I conceive it to be no mean Inducement to the glorious Undertaking, That his Memory shall be blest'd by late Posterity ; when others, who have swum down the Stream in Ease and Plenty, prostituting Honour and Conscience, and veering with every Wind to save their Lands, or their Preferments, shall either be mention'd with Detestation, or be entirely forgotten.

Methinks

Methinks the recording and immortalizing the Actions of so many brave Men were Reason enough for publishing a Collection of this Nature, if there were no other; that, if possible, in this degenerate Age, we might be brought to emulate, and consequently revive the Virtues of our great Ancestors.

It is true, there are other Gentlemen, the Subject of these Tryals, who have brought on their Memories everlasting Shame and Infamy; but from these too we may receive Instruction; as those claim our Imitation, these may furnish us with Caution, that we be not surpriz'd into *such* unhappy Measures as involv'd them, and their Relations, in so great a Ruin.

Lastly, the Reader will find there has been great Diligence us'd in making the Table. There is hardly any thing that can become a Question either in the Proceedings relating to *Bills of Attainder, Impeachments, Tryals of Peers by Commission, or in Parliament, or in the ordinary Tryals of Criminals by Juries*, but he may turn to it in an Instant.

And as nothing has more contributed to those many inconsistent and contradictory

tory Opinions and Resolutions, which every Reader is surpriz'd to find in these Tryals, than the Neglect of collecting and methodizing Precedents of this kind; it is no inconsiderable Recommendation of the Work, that it will, in all Probability, conduce to the rendring our Proceedings in Criminal Cases more consistent and uniform for the future.



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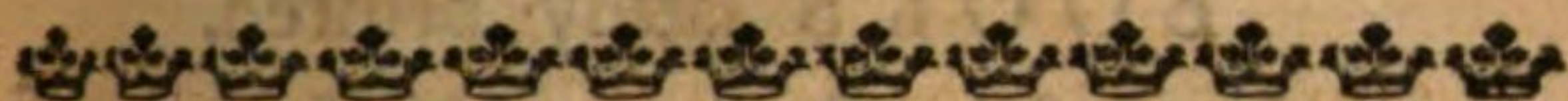
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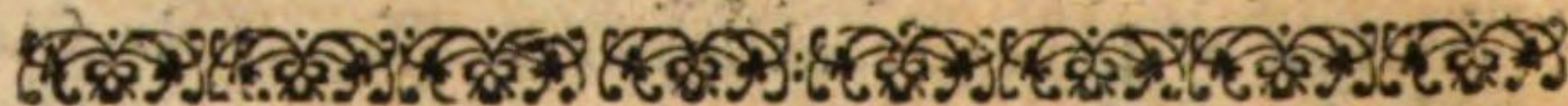
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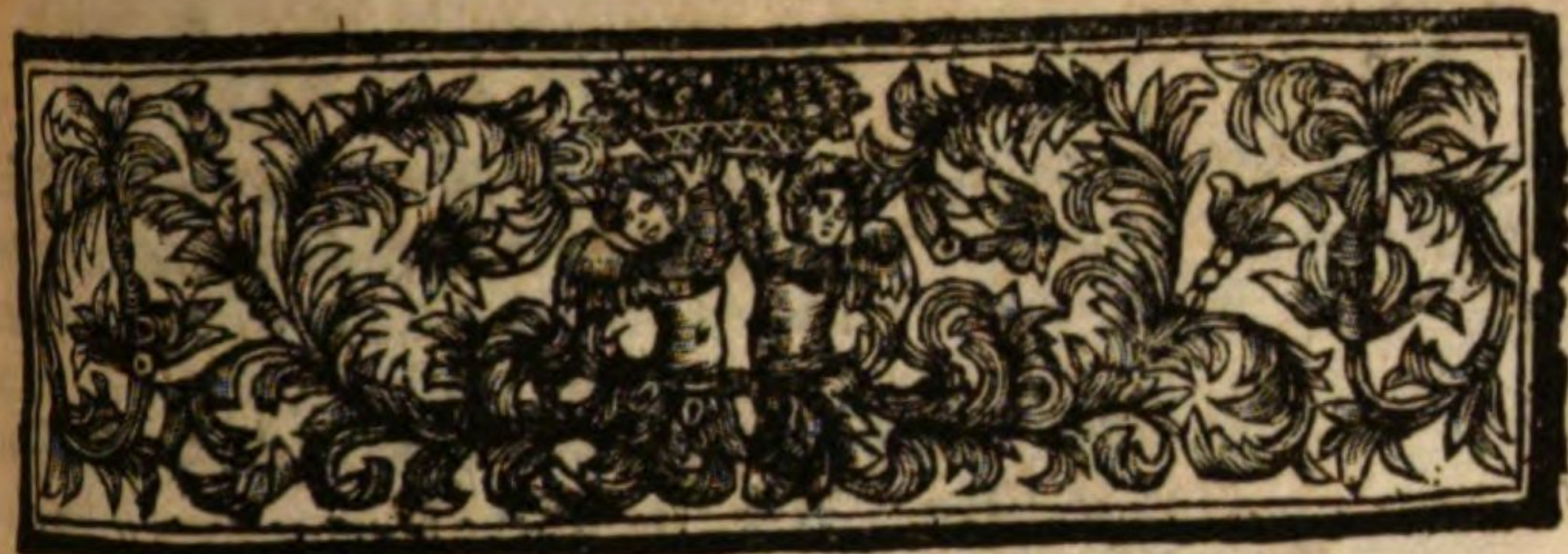
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STATE TRYALS.

The Tryal of WILLIAM THORPE, Vol. I. Pag. 25
Priest, for Heresy, before Dr.
Thomas Arundel, Archbishop
of Canterbury, and Lord Chan-
cellor of England, the 8th of
Henry the IVth. 1407.



THE Prisoner being brought before the Archbishop, and charg'd with sowing and dispersing his Heretical Doctrines in the North of England, and other Places:

The Prisoner charg'd with Heretical Doctrines.

The Archbishop, in the first Place, made him Offers of Mercy, upon Condition that he would meekly, and of good Heart, without feigning, kneel down and lay his Hand upon a Book and kiss it, promising faithfully to submit himself to his Correction and Decree.

Offers of Mercy made him on his Submission,

The Prisoner beg'd Leave to repeat his Profession of Faith, which in Substance is the same with the Apostles Creed: But desired, before he took the Oath demanded, that he might know in what Points he was to submit himself; What Correction or Penance he would enjoin him; and what was the Decree or Ordinance he must swear to fulfil.

Repeats his Profession of Faith.

Page 3.

Demands to hear the Terms he must swear to submit to.

The Substance
of the Oath re-
quired.

Archbishop. You shall swear to forsake all the Opinions which the Sect of the *Lollards* hold, and are slander'd with: So that after this time neither privily nor openly thou hold any Opinion which I shall, after that thou hast sworn, rehearse to thee here. Nor thou shalt favour no Man or Woman, young or old, that holdeth any of these Opinions, but after thy Knowledge and Power oppose them in every Diocess: And if they will not leave their false and damnable Opinions, thou shalt present them to the Bishop or his Ministers. And over this, I will that thou preach no more until I know that thy Conversation be just; that thy Heart and Mouth accord, in renouncing all the lewd Learning that thou hast taught heretofore.

Objects to it
that he must
turn a common
Informers.

Thorpe. If I consent to this, I shall become an Appelar, or every Bishop's Spy, and occasion the Death of many People, both ghostly and bodily; and I deem in my Conscience I were worthy to be cursed of God and all his Saints.

Threaten'd to
be burnt.

Archbp. If thou do not submit to my Ordinance and Decree, by *St. Thomas*, thou shalt be degraded, and follow thy Fellow in *Smithfield*.
[*William Soutre.*]

Page 4.

Relates how he
was prevailed
on to take Or-
ders.

Thorpe. Sir, My Father and Mother, on whose Souls God have Mercy, spent much Money to qualify me for Orders, and us'd many Arguments to prevail with me to take Orders; whereupon I apply'd my self to such Divines as were most famous for their Learning and exemplary Lives, whose Counsel I took, and have exercis'd my self ever since, being thirty Winters and more, perfectly to know God's Law. And if I should, after your Counsel, renounce all that I have learned, I should hereby first wound and defile my own Soul, and also be the occasion of destroying others. And have not many, particularly *Philip of Rampenton*, now Bishop of *Lincoln*, brought a Scandal upon the Church, and prejudic'd many People by their scandalous Recantations at *Paul's Cross*? who, being govern'd by worldly Wisdom, and for the sake of Preferment, dissemble their Principles,

That he should
give Offence to
good People by
a Recantation.

Principles, and are now become the most violent Persecutors of Christ's People.

Archbp. These Men were Fools and Hereticks, but now are become wise.

Thorpe. Sir, I think they are wise as to this World.

Archbp. Thou, and those of thy Sect, would shave your Heads close for a Benefice; for, by *Jesu*, I know none more covetous. But I say unto thee, who are those holy Men and wise, from whom thou hast thy Learning?

Page 5.
The Sect
charg'd with
Covetousness.

Thorpe. Master *John Wickliff*, Master *John Aiston*, *Philip* of *Rampenton*, *Nicholas Hertford*, *Davy Gotray*, Monk of *Byland*, Master of Divinity, and many others, who were holden right wise Men, and with whom I have communed long time and often, though some of them have renounc'd the Truth, choosing rather to blaspheme God, than to suffer Persecution a while for Soothfastness that Christ shed out his Heart Blood for.

He had his
Doctrine from
Wickliff.

Archbp. Although *Wickliff* were a great Clerk, yet his Doctrine is not approv'd of Holy Church. But why dost thou spend my time in such Discourses? Wilt thou submit to me or no?

Thorpe. Sir, I dare not, for the Dread of God, submit me to you after the Tenor that ye above rehears'd to me.

Archbp. Bring me hither the Certificate from *Shrewsbury*, under the Bailiff's Seal, testifying his Errors and Heresies. Which one of the Clerks having deliver'd to the Archbishop, he read as follows.

Charge against
him by the Ma-
gistrates of
Shrewsbury.

" The third Sunday after *Easter*, the Year of
" our Lord 1407, *William Thorpe* came unto the
" Town of *Shrewsbury*, and thorough Leave
" granted him to preach:

" He said openly in *St. Chaddis* Church in his
" Sermon, That the Sacrament of the Altar, af-
" ter the Consecration, was material Bread.

That he
preach'd against
Transubstan-
tiation.

" That Images should in no wise be worship'd.
" That Men should not go on Pilgrimages.

Image Worship.
Pilgrimages.

The *TRIAL* of

Tythes:
And that it was
unlawful to take
an Oath.

Page 6.

" That Priests have no Title to Tythes.
" And that it is not lawful to swear in any
" wife. "

Archbp. Is this wholsome Learning to be among
the People?

Thorpe. I never preach'd or taught thus pri-
vately or openly.

Archbp. I will give Credit to these worshipful
Men who have witness'd it under their Seals,
though thou deny it: Thou, and such others,
think that ye do right well to preach and teach
as ye do without Authority of any Bishop.

Affirms a Priest
may preach
without a Li-
cence from his
Ordinary.

Thorpe. By Authority of God's Law, and also
of Saints and Doctors, I am learned to deem that
it is every Priest's Office and Duty freely and
truly to preach the Word of God.

Page 7.

Archbp. Asketh not *St. Paul* how should Priests
preach except they be sent! And no Bishop
will admit thee to preach: And dost thou pre-
sume to preach, since thou art not sent, or li-
cens'd of thy Sovereign to preach? Saith not
St. Paul, that Subjects ought to obey their Sove-
reigns, and not only the good and virtuous, but
also Tyrants that are vicious?

That the Terms
on which Li-
cences are
granted are un-
lawful.

Thorpe. As to having a Letter of Licence from
a Bishop, none will be granted without entring
into unlawful Oaths to observe his Injunctions,
and we dare not bring our selves under such Ob-
ligations: Nor dare we leave our Office of
preaching (tho' we have not such Letters) which
all Priests, to their Power, are bound to perform
by divers Testimonies of God's Law, and of
great Doctors, without any mention of Bishops
Letters. And as to obeying our Sovereigns,
St. Peter biddeth the Servants of such Tyrants
obey them meekly, suffering patiently their ma-
licious Cruelties. But *Peter* counselleth not any
Servant or Subject to obey any Lord, Prince or
Sovereign in any thing that is not pleasing to
God. And I deem my self damnable, if I, either
for Pleasure or Displeasure of any Creature, apply
my self not diligently to preach the Word of God.

That he is
bound by his Of-
fice to preach.

Page 8.

Archbp.

Archbp. This is the manner of thee and thy Sect, to pick out Sentences of Holy Scripture, and of Doctors, to maintain your Errors against the Ordinance of Holy Church.

Thorpe. Sir, All my Will and Power is, and ever shall be, to be governed by Holy Church.

Archbp. What is Holy Church?

Thorpe. I call Christ and his Saints Holy Church.

Archbp. I wot well Christ and his Saints are Holy Church in Heaven; but what is Holy Church in Earth?

Thorpe. Holy Church hath two Parts, one reigneth joyfully in Heaven with Christ; the other is militant upon Earth; which only are the Pilgrims of Christ wandring towards Heaven, by stedfast Faith, grounded Hope, and perfect Charity.

Archbp. Thus thou wouldst busy us all Day. But as to the Articles exhibited against thee by the Men of *Shrewsbury*; How sayst thou, is the Sacrament of the Altar material Bread after Consecration?

Thorpe. Sir, I believe that the worshipful Sacrament of the Altar is the Sacrament of Christ's Flesh and his Blood, in form of Bread and Wine.

Archbp. But thou and thy Sect teachest that it is in Substance, Bread: Think you this is true teaching? The Church hath determined, that there abideth no Substance of Bread after the Consecration.

Thorpe. Sir, *St. Paul*, speaking of this Holy Sacrament, calleth it Bread, that we break. Also in the Canon of the Mass, after the Consecration, this most worthy Sacrament is call'd Holy Bread. And *St. Austin* saith, that thing that is seen is Bread: But that Mens Faith asketh to be inform'd of, is very Christ's Body. And for a Thousand Years after the Incarnation of Christ, this Determination was accepted of Holy Church as sufficient to Salvation. And other Belief in this Matter I have none.

Definition of a Church.

Page 9.

Proves the Sacrament to remain Bread after Consecration.

Page 10.

Archbp. But as to the second Point; what sayst thou, ought not Images to be worship'd in any wise?

Thorpe. Every thing that God hath made is good, and ought to have that Respect that is due to it; yet Images made by Man's Hands ought not to have Divine Worship paid them.

Archbp. I grant that no Body ought to worship such Images for themselves; but a Crucifix ought to be worship'd for the Passion of Christ represented thereby, and so brought to Man's Mind; so the Images of the Trinity, the Virgin Mary, Christ's Mother, and other Images of Saints, ought to be worship'd.

Thorpe. Sir, If the Wonders of God, and the holy Living and Teaching of Christ and his Apostles and Prophets, were made known to the People by the holy Living, and true busy Teaching of Priests: These were sufficient Books and Calendars to know God by, and his Saints, without any Images made with Man's Hands. But it is the vicious Living of Priests, and their Covetousness, that are the chief Cause of this Error, and all other Viciousness that reigneth among the People. *St. Gregory* was a great Man in the new Law, and he commended greatly a Bishop who forbad the Worship of Images.

Miracles done
at Shrines.

Archbp. Are there not at the North Door at London, at our Lady at *Walsingham*, and many other Places in *England*, great Miracles done? Should not the Images of such Holy Saints and Places, at the Reverence of God, and our Lady, and other Saints, be more worship'd than other Places and Images where no such Miracles are done?

His Reasons
against Image
Worship.

Thorpe. Sir, There is no Virtue in Images, and therefore no Body should vow to them, seek them, kneel to them, bow to them, or pray to them, or offer any thing to them, or kiss them, or incense them; and possibly the Miracles that are wrought at those Places may be done by the Power of the Devil. And, good Sir, since the Father of Heaven, that is, God in his Godhead,

is the most unknown thing that may be, and the most wonderful Spirit, having no Shape or Likeness of the Members of any Mortal: In what Likeness, or what Image, may God the Father be shew'd or painted?

Archbp. It sufficeth, that Holy Church suffereth the Images of all the Trinity, and other Images, to be painted and shewn. But to the third Point: What sayst thou, are not Pilgrimages lawful?

Thorpe. As I said at *Shrewsbury*; though they that have fleshly Wills travel far their Bodies, and spend mekill Money to seek and to visit the Bones or Images of this or that Saint, such Pilgrimage going is nothing praiseable or thankful to God, or to any Saint of God: They waste their Goods upon vicious Hostlers, and lewd Women, with which they should feed their poor Neighbours; they take along with them those that can sing wanton Songs; and some have Bagpipes.

Archbp. Doth not *David* in his last Psalm teach me to have divers Instruments of Musick to praise God therewith?

Thorpe. Sir, By the Sentence of divers Doctors these ought to be interpreted figuratively.

Archbp. Is it not lawful to have Organs in the Church?

Thorpe. A good Sermon were more acceptable to God.

Archbp. What sayst thou to the fourth Point, that Priests have no Title to Tythes?

Thorpe. Neither Christ, nor any of his Apostles, took Tythes of the People, or commanded the People to pay Tythes to Priests or Deacons, And Pope *Gregory* the Tenth was the first who ordain'd that Tythes should be given to Priests. And whatever Dignity or Order any Priest is of, if he conform him not to follow Christ in wilful Poverty, and other heavenly Virtues, he is a Priest but in Name: So saith *St. Austin*, *Gregory*, and *Chrysostom*. And if Priests were not too numerous, and lived virtuously, and taught the

People diligently, the People would give them freely a sufficient Livelihood.

Clerk. Will the People give freely to Priests their Livelihood, when by Law the Priests can scarcely constrain the People to give them their Livelihood?

The Poor ought to have them.

Thorpe. Whatever Priests take of the People, be it Tythe or Offering, or other Duty or Service, the Priest ought to have no more than his bare Living, and dispense the Residue to the Poor of the Parish.

Archbp. And thus thou givest the Levites of the Old Law greater Freedom and Privileges than to the Priests under the New Law.

Thorpe. Sir, There is a Doctor, I think 'tis St. Jerom, who saith, that Priests who challenge now in the New Law Tythes, say, in effect, that Christ is not come in the Flesh.

Page 15.

Archbp. What sayst thou as to the last Article exhibited against thee, that thou preachedst openly in *Shrewsbury*, That it is not lawful to swear in any Case?

Not lawful to swear but upon Necessity.

Thorpe. Sir, I said that none ought to swear by any Creature; or even by God, where he is at Liberty to swear or not: But if he may not excuse himself without Oath before them who have Power to administer it, he ought to swear only by God.

Page 16.

Clerk. Wilt thou tarry my Lord no longer, but submit thee here meekly to the Ordinance of Holy Church, and lay thine Hand upon a Book touching the Holy Gospel of God, promising not only with thy Mouth, but also with thine Heart to stand to my Lord's Ordinance?

Not lawful to swear upon a Book.

Thorpe. If *Chrysostom* proveth him worthy great Blame that bringeth forth a Book to swear upon, it must needs follow that he is more to blame that sweareth on that Book.

Page 17.

Clerk. Why on *Friday* last counseledst thou a Man of my Lord's, that he should not shrive himself to Man, but only to God?

Page 18.

He is against Confession to a Priest.

Thorpe. Sir, About two Years since I heard one *Moredon*, a Monk of *Feverham*, preach at *Canterbury*

terbury at the Cross within *Christ Church Abbey*, saying thus of Confession: Since the Lord God is more ready to forgive Sin than the Fiend is, or may be of Power to move any Body to Sin; then whosoever will shame and sorrow heartily for their Sins, knowledging them faithfully to God, amending them after their Power and Cunning; without Counsel of any other than of God and himself; through the Grace of God all such Men and Women may find sufficient means to come to God's Mercy, and so to be clean assoiled of all their Sins.

Archbp. Holy Church approveth not this Learning. Submit thee now here meekly to the Ordinance of Holy Church, which I shall shew to thee.

Page 20.

He is advised to recant.

Clerk. Take thee to a Priest, and shrive thee clean; forsake all such Opinions, and take thy Penance of my Lord here.

Archbp. Busy you no longer about him; for he, and other such as he is, are confederated so together that they will not swear to be obedient, and submit them to Prelates of Holy Church: For since I stood here his Fellow sent me Word that he will not swear, and that he counsell'd him that he should not swear to me: Long time hast thou busied thee to pervert whomsoever thou mightest, therefore as many Deaths art thou worthy of as thou hast given evil Counsels. By God, I shall set upon thy Shins a Pair of Perlis, that thou shalt be glad to change thy Voice: And some counsell'd the Archbishop to burn him, and others to drown him in the Sea, which was near at hand.

Page 21.

He is threaten'd.

And a Clerk standing by kneeled to the Archbishop, praying he would deliver the Prisoner to him, and he would undertake within three Days he should not resist any thing that was commanded him to do of his Prelate.

And the Archbishop said he would ordein for him himself.

And a Clerk bad him kneel down, and ask Grace, and submit him lowly, and he would find it best for him,

He is advised to submit himself.

Thorpe,

Thorpe. Sir, As I have said to you divers times to Day, I will wilfully and lowly submit me to be governed after my Cunning and Power to God and to his Law, and to every Member of Holy Church, as far forth as I can perceive these Members accord with their Head, Christ, and will teach me, rule me, or chastize me, by Authority specially of God's Law.

Archbp. I wist well he would not without such Additions submit him. Then was he threaten'd, curs'd and scorn'd by those that stood by, but he said nothing.

Archbp. Wilt not thou submit thee to the Ordinance of Holy Church?

Refuses to submit on the Archbishop's Terms.

Thorpe. Sir, I will full gladly submit me as I have shewn before.

Then the Constable of *Sallwood* Castle was order'd to have him forth in haste.

Page 35.

The Tryal of Sir JOHN OLDCASTLE, Lord Cobham, before the Archbishop of Canterbury, 1 Hen. the Vth. in the Year 1413.

Page 37.

ON the Saturday after the Feast of St. Matthew, being the 23d Day of September, as we held our Court in the Chapter House of St. Paul's, London, with our Brethren Richard Lord Bishop of London, and Henry of Winchester in Sessions with us; Sir Robert Morley, Knight, and Lieutenant of the Tower of London, appeared in Court with the said Sir John Oldcastle Knight, and delivered him to us.

For he had been arrested a little before by the King's Order, and confin'd to the Tower.

To the said Sir John Oldcastle thus personally appearing, we repeated in soft and moderate Terms, and in a manner very courteous and obliging, all our Proceedings against him, as they stand upon the Journal of the former Day; Namely,

How

How he the said Sir John stood presented and charg'd by and upon certain Articles exhibited in Convocation of the Prelates and Clergy of our said Province.

And how he had been cited and excommunicated for his Contumacy.

And though by his Default it was come to this, we notwithstanding shew'd our selves ready and willing to absolve him.

But he the said Sir John taking no notice of this our Overture, answered, he would gladly make Profession before us, and my said Brethren, of the Faith he believ'd and maintain'd.

For which we giving leave, as he desir'd, he drew out of his Bosom an indented Writing, and there openly read the Contents of it, and afterwards, with his own Hand, presented to us the said Writing, touching the Articles whereof he was accus'd; of which this is the Copy:

" I John Oldcastle, Knight, and Lord Cobham, Sir John's Confession of Faith.

" desire it may be known to all Christians; and

" I call God to witness, that I never have enter-

" tain'd, and, by the Help of God, never will en-

" tertain, any Persuasion, which is not consistent

" with a firm and undoubting Belief of all the

" Sacraments which were ordain'd and appoint-

" ed by Christ himself for the use of his Church.

" Moreover, that my Faith, as to the four

" Points alledg'd against me, might be more

" clearly understood, I declare,

" First of all, That I believe that in the ado-

" rable Sacrament of the Altar the very Body

" of Christ does exist, under the Species of

" Bread: The same Body, I mean, that was

" born of his Mother Mary, that was crucify'd

" for us, that dy'd and was bury'd, and rose

" again the third Day from the Dead, and was

" exalted to the Right Hand of his eternal Fa-

" ther, where he now sits Partaker with him in

" his Glory.

" Then for the Sacrament of Penance, I be-

" lieve it is chiefly necessary for all that desire

" to

As to Transubstantiation.

Penance.

Page 33.

“ to be sav’d, to amend their wicked Lives, and
 “ undergo such a Penance for the sinful Part
 “ of them, as by a true Confession, an undis-
 “ sembled Contrition, and lawful Satisfaction,
 “ manifests itself to be agreeable to the Holy
 “ Scriptures, without which none can hope for
 “ Salvation.

Images.

“ Thirdly, with respect to Images : I hold
 “ that they are no Ingredient in the Christian
 “ Belief, but long after the Publication of the
 “ Faith of Christ, were introduc’d into the
 “ World, by the Permission of the Church, to be
 “ a Calendar to the Laity and the Ignorant, that
 “ by visible Representations of the Sufferings of
 “ Christ, and of the pious Lives and Martyr-
 “ doms of the Saints, the Remembrance of those
 “ things might the more easily be impress’d on
 “ their Minds : But if one so abuses the Repre-
 “ sentation as to give that Worship to these
 “ Images of the Saints, which is due to the
 “ Saints themselves, or rather to him to whom
 “ the Saints themselves owe all Honour and A-
 “ doration, and putteth his Confidence in them,
 “ which is only to be plac’d in God ; or is so
 “ affected towards these senseless Images, as to
 “ be more devoted to them than God, in my
 “ Opinion he is guilty of Idolatry, and wickedly
 “ sins against God, the only Object of his Wor-
 “ ship.

Pilgrimages.

“ Lastly, I am fully persuaded, that there is
 “ no abiding Place upon Earth, but that we are
 “ all Pilgrims either on the way to Happiness,
 “ or tending to Misery : He that either knows
 “ not, or will not be instructed in, nor live in
 “ the Practice of the Commandments of God,
 “ it is in vain for him to expect Salvation, tho’
 “ he went on Pilgrimage into all Quarters of
 “ the World. And on the other side, he that
 “ lives in Obedience to the holy Commandments
 “ of God, will undoubtedly be sav’d, though he
 “ never went a Step on Pilgrimage in his Life,
 “ either to *Rome*, or *Canterbury*, or *Compostell*, or
 “ to any other Places.”

Sir

Sir *John* having thus read his Writing, we with our Brethren, the Bishops above mentioned, and divers other Doctors, and learned Men, held a Consultation about the Contents of it : And by the Advice and Agreement of the same, we thus apply'd to the said Sir *John Oldcastle* at the same Time and Place.

Look you, Sir *John*, in this Writing of yours it must be confess'd, there are contain'd many good Things and right Catholick ; but this Day was appointed you to answer to other Points, which favour of Error and Heresy, which your Declaration has not fully answered : And therefore you ought to explain your self more clearly as to those Points, and more particularly declare your Faith and Assertions express'd in the said Writing, *viz.*

Whether you hold, believe and affirm, that in the Sacrament of the Altar, after Consecration by the Priest, there remaineth material Bread or not ?

Also, Whether you hold, believe, and affirm that in the Sacrament of Penance, it is necessary, where a Priest can be had, to confess your Sins to the Priest, ordain'd by the Church ?

To which State of the Questions, amongst many other things said by the said Sir *John*, he answer'd expressly :

That he would not declare himself otherways, nor return any other Answer than in his said Writing.

Upon this we reply'd to the said Sir *John*, with much Patience, and in a courteous and affectionate manner : Sir *John*, it behoves you to consider well of this Matter ; because if you don't return a clear Answer to the Articles exhibited against you within the time assign'd by the Judge, we may proceed to pronounce and declare you an Heretick.

Page 19.

But Sir *John* would abide by his former Answer, and afford us no other.

We therefore advis'd with our Brethren, the Bishops above mention'd, and others of our Council,

cil, and by their Advice we declared to the said Sir *John Oldcastle*, what the Holy Roman Church, following the Doctrines of St. *Austin*, St. *Jerom*, and St. *Ambrose*, and other Fathers in these, had determin'd, which Determinations all Catholicks were oblig'd to submit to.

To which the said Sir *John* gave for Answer :

That he would readily assent to and observe the Determinations and Decisions of Holy Church, and all that God requir'd him to believe and observe ; but that our Lord the Pope, the Cardinals, the Archbishops and Bishops, and other Prelates of the Church, had Power to determine such things, he would by no means affirm.

We still patiently bearing with him, in hopes he might be better inform'd by mature Deliberation, promis'd the said Sir *John*, that certain Determinations, relating to the Points above mentioned, and to which he ought to give a clearer Answer, should be translated from the *Latin* into *English*, that he might the more easily understand them, and they be published for his Use.

And we commended and affectionately entreated him to prepare and deliver in a full and clear Answer to the same, on *Monday* next following.

And we caused these Determinations to be translated the same Day, and to be delivered into his own Hands the next *Sunday*, the Tenor of which Determinations is as follows :

The Sense of
the Church as
to Transub-
stantiation.

The Faith and Determination of the Holy Catholick Church, concerning the Sacrament of the Altar, is this: That after Consecration by a Priest at Mass, the Substance of the Bread is chang'd into the material Body of Christ, and the Substance of the Wine into the material Blood of Christ ; therefore after Consecration, there remaineth not any of the Substance of Bread and Wine, which were in both before it.

What Answer do you give to this Article ?

Also Holy Church hath determined, that it is the Duty of every Christian, living in the World,

to confesse his Sins to a Priest ordain'd by the Church, if he has the Opportunity of such an one.

What are your Sentiments of this Article ?

Christ ordain'd St. Peter to be his Vicar on Earth, whose See is the Church of Rome, and that all the Successors of Peter, now call'd the Popes of Rome, should succeed in the same Power and Authority with which Christ invested him ; by whose special Power are constituted and ordain'd Prelates in particular Churches ; as Archbishops, Bishops, Curates, and the rest of the Ecclesiastical Order, to which all Christians owe Obedience, according to the Traditions of the Roman Church.

The Authority of the Pope.

This is the Determination of Holy Church ; and what is your Opinion of this Article ?

Besides these, the Holy Church hath ordain'd, that it is the indispensable Duty of every Christian Man to go on Pilgrimage to holy Places, and there to adore the sacred Relicks of Apostles, Martyrs and Confessors, and of all the Saints in the Calendar of the Roman Church.

Pilgrimages.

Page 40.

How do you hold this Article ?

On Monday the 25th of the said Month of September, we assembled with our Brethen, the Bishops above mentioned ; with the Addition, by our Order and Command, of our venerable Brother, Benedict, by the Grace of God, Bishop of Bangor.

And our Counsellors and Officers ; namely, Mr. Henry Ware, Official of Canterbury ; Philip Morgan, Doctor of both Laws ; Howell Kiffin, John Kemp and William Carlton, Doctors of the Canon Law ; and John Witnam, Thomas Palmer, Robert Wombervel, John Withead, Robert Chamberlain, Richard Dodington, and Thomas Walden, Doctors in Divinity ; also James Cole and John Stevens our Notaries, both call'd to assist and take the Examinations in the Tryal:

Were all and every of them sworn upon the Holy Evangelists, as they would answer it to God and the World, faithfully to discharge their

their Duty that Day, in the Matter and Cause above mentioned.

After this Sir Robert Morley, Knight, and Lieutenant of the Tower of London, brought Sir John Oldcastle into Court, and set him before us.

To whom we affably and courteously repeated the Proceedings of the former Day, and as before told him, how he had been, and still stood, excommunicated ; and we entreated and besought him to desire and accept of Absolution, in the usual Form of the Church.

To which Sir John then answer'd in these Words.

That he desir'd no Absolution from them, but only from God.

Upon this we pray'd the said Sir John, with an Air of Kindness and Concern, to give his full Answer to the Articles exhibited against him.

But first, we demanded what he had to say about the Sacrament of the Eucharist ; to which Article, among other Things, he answer'd and said :

That as Christ, when he liv'd upon Earth, had the Divine and Humane Nature united together in him ; and the Divine was veil'd and cover'd under the Humane, and only the Humane visible and outward : So in the Sacrament of the Altar, there is the very Body of Christ, and real Bread too ; the Bread is the thing which we see with our Eyes, and the Body of Christ which is hidden under it, we do not see.

And the Faith about this Sacrament of the Altar, express'd in the Writing which we sent to him, as determin'd by the Holy Roman Church, and the Fathers, he expressly deny'd to be the Determination of the Church ; or if it was the Determination of the Church, he asserted such Determination of the Church to be made contrary to the Holy Scriptures, and after the Church was aggrandiz'd and corrupted, and not before.

To the Articles about Penance and Confession, he answer'd in these Words :

That

That if any one is so intangled in the Snares of Sin, that he knows not how to extricate himself, it is adviseable, and expedient for him to apply to some pious and discreet Minister for ghostly Counsel; but that he should confess his Sin to his own, or to any other Priest, though he had never so good an Opportunity, is not at all necessary to Salvation; because such a Sin can be forgiven only upon Contrition; and on that alone can the Sinner be clear'd.

Page 41.

Concerning the Adoration of the holy Cross, he then declared and asserted, That the Body of Christ, which hung upon the Cross, ought only to be worship'd, because the Body was and is the only adorable Cross.

The Worship of the Cross.

And being ask'd what Honour he allow'd to the Image of the Cross, he answer'd in these express Words:

That to keep it clean, and in his Closet, was the only Honour he vouchsafed it.

As to the Power of the Keys, our Lord the Pope, Archbishops, Bishops, and other Prelates, he said:

The Pope, and we together, made up the true Antichrist: The Pope was Head, the Archbishops, Bishops, and other Prelates, the Body and Limbs; and the Friars, the Tail of Antichrist: To which Pope, Archbishops and Prelates, there was no Obedience due, any farther than they imitated Christ, and Peter, in their Lives, Manners and Conversation; and that he is the Successor of Peter, who follows him in the Purity of his Life and Conversation, and no other.

Denies any Obedience as due to our Spiritual Superiours.

The said Sir John added, addressing himself with a loud Voice, and extended Hands, to the People that were present:

Those who sit in Judgment upon me, and are desirous to condemn me, will seduce you all, and themselves, and lead you to Hell; take therefore good heed of them.

Upon his saying this, we apply'd to the said Sir John, and besought him, with Tears in our Eyes, and exhorted him in the most compassionate

nate Manner we could, to return to the Unity of the Church. To which he return'd this peremptory Answer :

That he would not believe nor maintain otherwise than he had before declared.

Seeing therefore he was so harden'd in his Errors, that we had no Hopes of working on him to renounce them, we proceeded with Regret and Bitterness of Heart to pronounce the following definitive Sentence.

Sentence pronounced upon him.

In the Name of God, Amen. We Thomas, by Divine Permission, Archbishop, and humble Minister of the Holy Church of Canterbury, Primate of all England, and Legate of the Apostolick See.

Whereas in our last Convocation of the Clergy of our Province of Canterbury, holden in the Cathedral Church of St. Paul, London, after Consultation upon several heretical Tenets, and strict Enquiry made who were the Authors and Abettors of the same, Sir John Oldcastle, Knight and Lord Cobham, was detected and presented of and for the said Heresies, as having given great Scandal throughout our Province of Canterbury, by openly and avowedly professing the same. Upon the Address and Representation of all the Clergy in the said Convocation for a Process, we proceeded according to Law against the said Sir John ; and (as God knows) with all the Equity and Favour that could possibly be shewed. And following the Steps of Christ, who would not the Death of a Sinner, but rather that he should be converted and live, we endeavoured to reclaim the said Sir John, and try'd all ways and means that we could devise to reduce him to the Unity of the Church, declaring unto him the Doctrines, Tenets, and Determinations of the holy Roman and universal Church, relating to those Points.

' And though We found he had Apostatiz'd
' from the Catholick Faith, and was so confirm'd
' in his Error, that he would not confess it, nor
' clear himself of it, nor disavow it; yet for-
' bearing him in paternal Love, and out of a sin-
' cere Desire of his Salvation, we allow'd him a
' competent time for Deliberation, and wherein
' he might repent, and reform himself.

' But forasmuch as We have experienc'd the
' said Sir *John* to be incorrigible and irreclaim-
' able, we at last, with Grief and Heaviness of
' Heart, in Obedience to what the Law requires,
' proceed to give Sentence definitive against
' him.

' In the Name of Christ, and having his Ho-
' nour only in View: Forasmuch as We have
' found by divers Acts done, produc'd and exhi-
' bited by Indications, Presumptions, and Proofs,
' and many other Kinds of Evidence, that Sir
' *John Oldcastle*, Knight, is really and truly an
' Heretick, and a Follower of Hereticks, against
' the Faith and Religion of the holy *Roman* and
' Catholick Church; and particularly with Re-
' spect to the Sacraments of the Eucharist and
' Penance; that as a Child of Darknes and Ini-
' quity, he had harden'd his Heart to that De-
' gree, that he refuses to hear the Voice of his
' Pastor, and will not be prevail'd upon by gentle
' Monitions, nor reduc'd by soft Persuasions, tho'
' the Merits of our Cause, and the Demerit of
' his own, he had diligently canvass'd and weigh'd,
' and so aggravated the Wickedness of his Error
' by his damnable Obstinacy.

' We, unwilling that he should contract further
' Degrees of Guilt, by the infecting others with
' the Contagion of Heresy, by the Advice and
' Consent of Men famous for Discretion and Wis-
' dom, our venerable Brothers, the Lords *Richard*
' Bishop of *London*, *Henry* Bishop of *Winchester*,
' and *Benedict* Bishop of *Bangor*, and some other
' Doctors in Divinity, and of Canon and Civil
' Law, and other religious and learned Men,
' call'd to our Assistance; We do peremptorily
and

‘ and definitively, by this present Writing, judge,
 ‘ declare, and condemn the said Sir *John Old-*
 ‘ *castle*, for an Heretick, convicted of the detest-
 ‘ able Crime of Heresy, and utterly refusing to
 ‘ be reconciled to the Church by Repentance;
 ‘ and an Apostate from those Doctrines, in the
 ‘ above mention’d Articles especially, which the
 ‘ holy *Roman* and Catholick Church holds, teaches,
 ‘ and hath determin’d; and we leave him from
 ‘ henceforth, as an Heretick, to the secular
 ‘ Judgment.

‘ And furthermore, We have excommunicated,
 ‘ and by these Presents do denounce excommuni-
 ‘ cated the said Heretick, and all others, who
 ‘ shall hereafter, in favour of his Error, counte-
 ‘ nance, defend, or afford him any Counsel, Aid
 ‘ or Comfort; deeming such Person or Persons
 ‘ as Abettors, Encouragers and Defenders of He-
 ‘ reticks.

‘ And that these Premises might be promulg’d
 ‘ and known to all Christians, We charge and
 ‘ enjoin you, forasmuch as the said Sir *John*
 ‘ *Oldcastle* was and is condemned by us for an
 ‘ Heretick, and Schismatick, and as erroneous in
 ‘ the above mention’d Articles; and also all
 ‘ other Persons, who, out of Favour or Affection
 ‘ to his Error, shall hereafter countenance, defend,
 ‘ or afford him any Counsel, Aid or Comfort,
 ‘ are excommunicated, as deem’d Abettors, En-
 ‘ couragers, and Patrons of Hereticks; according
 ‘ to our said definitive Sentence, to give Orders
 ‘ and Directions to your Priests and Curates of your
 ‘ respective Cities and Dioceses, in their respec-
 ‘ tive Churches, when there is the greatest Con-
 ‘ gregation of People, to declare, publish and ex-
 ‘ pose, with loud and audible Voice, and in our
 ‘ Mother Tongue, the said Heretick and Here-
 ‘ ticks, according to our said definitive Sentence,
 ‘ and the Order observ’d in this Process; to the
 ‘ end that any wrong Notions, which possibly
 ‘ the People may have given into, concerning
 ‘ these Matters, and our Proceedings upon them,
 ‘ might be rectify’d by this publick Declaration.

‘ More-

Moreover, We will command you the Bishops here present, to take Copies hereof Word for Word, and send one to each Bishop of our Province of *Canterbury*; that so all and every of 'em may publish, intimate and declare, and cause, by their respective Priests and Curates, to be publish'd in their several Cities and Dioceses, the Manner and Form of this our Proceeding; and also the said Sentence pronounc'd by us, and all and singular the Contents of the same.

And lastly, We require of you and them, that this Business be dispatch'd with all convenient Expedition; and that you and they do duly and punctually advise and certify us of the time of receiving these Presents, and how this our Command has been executed by your and their Letters Patents, according to the Tenor hereof.

Given at our Palace at Maydstone, on the tenth Day of October in the Year of our Lord 1413, and of our Translation the 18th.

The Tryal of Sir THOMAS MORE,
May 7. 26 Hen. VIII. 1535.

D. of Norfolk YOU see how grievously you have offended His Majesty: Yet he is so very merciful that if you will lay aside your Obstinacy, and change your Opinion, We hope you may obtain Pardon and Favour in his Sight.

Sir Thomas. Most noble Lords, I have great Reason to return Thanks to your Honours for this your great Civility; but I beseech Almighty God that I may continue in the Mind I am unto Death.

Page 44.
A Pardon promis'd him on his Submission.

He refuses to alter his Opinion.

The Court being sensible of his Age and Weakness order'd him a Chair, whereon being seated, he proceeded to his Defence.

Charg'd with
being against
the King's se-
cond Marriage.

Which he justifi-
es.

Complains of a
long Imprison-
ment, and Loss
of his Estate.

Charg'd with re-
fusing to give
his Opinion of
the King's Su-
premacy.

Christopher Hales.

Silence not Cri-
minal.

Page 45.
Charg'd with
Confederating
with Bishop
Fisher against
the Act.

Sir Tho. This Indictment consists of four Heads. First, That I have been an Enemy, out of Stubbornness of Mind, to the King's second Marriage. I confess, I always told his Majesty my Opinion of it, according to the Dictates of my Conscience, which I neither would nor ought to have conceal'd ; for which I am so far from thinking my self guilty of High-Treason, that, on the contrary, being requir'd to give my Opinion by so great a Prince, in an Affair of such Importance, upon which the Peace of the Kingdom depended, I should have basely flatter'd him and my own Conscience, had not I spoke the Truth as I thought : Then indeed I might justly have been esteem'd a most wicked Subject, and a perfidious Traytor to God. If I have offended the King herein ; if it can be an Offence to tell ones Mind freely when his Sovereign puts the Question to him, I suppose I have been sufficiently punished already for the Fault, by the great Afflictions I have endured, by the Loss of my Estate, and my tedious Imprisonment, which has continu'd already near fifteen Months.

The second Charge against me is, that I have violated the Act made the last Parliament, because I have refus'd to declare my Opinion, whether the King be Supreme Head of the Church : Surely, this Statute, or any other Law, cannot punish a Man for his Silence.

Attor. Gen. Your Silence is an evident Proof of the Malice of your Heart ; for no dutiful Subject, being ask'd this Question, will refuse to answer it.

Sir Tho. Silence is no Sign of any Malice in the Heart ; for, according to the Civilians, he that holds his Peace seems to give his Consent : And I sincerely protest I never reveal'd the contrary to any Man alive.

As to the third Article, which charges me with traiterous Endeavours and Practices against that Statute, because I wrote divers Letters to Bishop *Fisher*, and exhorted him to violate that Law and continue in his Obstinacy : I do insist that
those

those Letters be produced, by which I may either be acquitted or convicted. But because you say the Bishop burnt them, I will tell you the whole Truth. Some of those Letters related only to our private Affairs, and one of them was an Answer to his, wherein he desired to know what Answers I made concerning the Oath of Supremacy; I answer'd, I had settled my Conscience, and let him satisfy his according to his own Mind; and I gave him no other Answer.

Denies it.

As to the principal Crime objected against me, that I should say upon my Examination in the Tower, *That this Law was like a two-edg'd Sword*; for in consenting to it I should endanger my Soul, and in rejecting it I should lose my Life. It's evidently concluded, as you say, from this Answer, that *Fisher* was in the Conspiracy, because he made the like. To this I reply, that my Answer was conditional; if there were Danger both in allowing and disallowing of that Act, then, like a two edg'd Sword, it seem'd a hard thing it should be put upon me, who had never hitherto contradicted it either in Word or Deed. If the Bishop's Answer was like mine, it did not proceed from any Conspiracy of ours, but from the Similitude of our Learning and Understanding. To conclude: I do sincerely avow, That I never spoke a Word against this Law to any Man living; though perhaps the King's Majesty hath been told the contrary.

Charg'd with saying the Act was like a two-edg'd Sword.

He denies it.

To this Answer little or no Reply was made, or any Witnesses produced, except one *Rich*, who reported a Conference between him and Sir Thomas in the Tower, affirming, he said the Act was like a two-edg'd Sword; which none of the Company would attest but himself, though many Persons of Honour were present, and examined thereupon at the Tryal: And Sir Thomas urg'd several Reasons why Mr. *Rich*'s Credit ought not to be depended on. However, the Judge proceeded to give his Charge to the Jury, who were scarce withdrawn a quarter of an Hour before they brought him in guilty.

He is convicted.

The Lord Chancellor demanding of the Prisoner, if he had any thing to say why Judgment should not be pronounc'd against him, he answer'd as follows :

He denies the King's Supremacy.

Forasmuch as this Indictment is founded on an Act of Parliament, directly repugnant to the Laws of God, and his Holy Church ; the Supreme Government of which, or of any part thereof, no Temporal Person may, by any Law, presume to take upon him, that of Right belonging to the See of *Rome*, which by special Prerogative was granted by the Mouth of our Saviour *Christ* himself to *St. Peter* and the Bishops of *Rome*, his Successors only : It is therefore among Catholick Christians insufficient to charge any Christian with Obedience to it. Nor can this Kingdom, being but one Member, and a small Part of the Church, make a particular Law, disagreeing with the general Law of *Christ's* universal Catholick Church.

His Sentence.

His Sentence was the same as is usual in Cases of High-Treason ; but afterwards all remitted but beheading.

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The Tryal of Sir NICHOLAS THROCKMORTON, the 17th of April 1 Mariae, 1554.

Indictment.

Clerk of *the Crown.* “ *N*icholas Throckmorton, Knight, hold
“ up thy Hand ; Thou stand'st
“ indicted, for that thou didst falsely, traiterously,
“ ly, &c. conspire and imagine the Death of the
“ Queen's Majesty, and falsely and traiterously
“ didst levy War against the Queen, within her
“ Realm ; and also was't adherent to the Queen's
“ Enemies, within her Realm, giving them Aid
“ and Comfort : And also falsely and traiterously
“ didst conspire and intend to depose and deprive
“ the Queen of her royal Estate, and so finally destroy
“ her : And also thou didst falsely and traiterously
“ devise and conclude, violently to take the Tower of
“ London, &c. Of all which

" which Treasons, and every of them in Manner
" and Form, &c. Art thou guilty or not guilty ?

Throckmorton. I desire leave to speak before I
plead to the Indictment.

Court. You must first plead whether you are
guilty or no.

Throckm. Then I plead not guilty.

Clerk. How wilt thou be try'd ?

Throckm. Shall I be try'd as I wou'd or as I
shou'd ?

Court. You shall be try'd as the Law will ;
therefore you must say, by God and the Country.

Throckm. Then it is not as I wou'd. But since
you will have it so, I desire to be try'd by Faith-
ful and Just Men.

The Jury are call'd, the Queen's Council con-
sult about them, and Challenge two peremptorily
for the Queen, without shewing Cause, tho' it
was insisted on by the Prisoner. The Court and
Council endeavouring to pack a Jury for their
Turn : *Throckmorton* said, Ah ! Mr. *Cholmley*, will
this foul packing never be left ?

After the Jury were sworn, and Proclamation
made as usual, Serjeant *Stanford* presented him-
self to speak.

Throckm. May it please you, Master Serjeant,
and the rest of the Queen's learned Council, al-
though you are appointed to manage the Charge
against me ; yet remember I am your Brother
Christian ; and have some regard to Equity, and
your Duty to God. It is lawful for you to make
use of your Learning and Eloquence, so as you
do not thereby seduce the Minds of the simple
and unlearned Jury to believe things otherwise
than they really are : For I know how by Persua-
sions, Enforcements, Presumptions, applying, im-
plying, inferring, conjecturing, and deducing of
Arguments, and wresting of Law, unlearned Men
may be induced to think and judge those things
that are indifferent, or, at worst, but Oversights,
to be great Treasons.

Stanford.

Not allowed to
speak till he had
pleaded.

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Jurors chal-
leng'd for the
Queen without
shewing Cause.
Court endea-
vours to pack a
Jury.

Prisoner desires
the Council not
to mislead the
Jury.

Stanford. And it please you, my Lords, I doubt not to prove evidently, that *Throckmorton* is rightly indicted of these Treasons; that he was the principal Contriver and Procurer of the late Rebellion; and that *Wyat* was but his Minister. How say'st thou, *Throckmorton*, didst thou not send *Winter* to *Wyat* into *Kent*, and devise that the Tower should be taken, with other Instructions concerning *Wyat's* Rebellion?

Throckm. I confess I did say to *Winter* that *Wyat* was desirous to speak with him: But this proves no such Matter as is laid in the Indictment.

Confession of a
third Person
who was living
read against
him.

Stanf. Read *Winter's* Confession; which was to this Effect, That *Throckmorton* met him, and told him *Wyat* desir'd to speak with him at his House in *Kent*: That afterwards *Throckmorton* met him; and *Winter* said That *Wyat* doth mislike the *Spaniards* coming into this Realm; That he doth daily see them arrive here, scattered like Soldiers: And therefore he thinketh good the Tower should be taken before the Prince come, lest it be delivered to the *Spaniards*: That *Throckmorton* answered, he misliked it for divers Respects: That another time *Throckmorton* met the said *Winter* in *St. Paul's*, and demanded if he were not Admiral of the Fleet that went to *Spain*; and *Winter* answered yes: That *Throckmorton* advised him to put the Lord Privy Seal, and his Train, a shore in the West, to avoid the *French* Squadron. He said also, that *Wyat* had chang'd his Purpose of taking the Tower: And that another time *Throckmorton* met him; and that on his telling him the Emperor had sent him some fair China; *Throckmorton* said, for this China you have sold your Country.

Throckm. Suppose the whole of this Confession true, what is here deposed to bring me within the Compass of this Indictment?

Stanf. It appeareth that you were of Council with *Wyat*.

Throckm. I met, by Chance, a Servant of *Wyat's*, who asked me for Mr. *Winter*; and desired me,
if

if I met *Winter*, to tell him his Master wou'd speak with him, and where he was.

Attorney General. But what say you as to the taking of the Tower? Edward Griffith

Throckm. I answer, tho' *Wyat* thought meet to attempt it, and *Winter* inform'd me of it, you cannot extend *Wyat's* Devices to be mine, so as to bring me within the Compass of Treason: Besides, *Winter*, in his Confession, does avow there that I did much mislike it: Nor is it likely that I shou'd Confederate against the Lieutenant of the Tower, his House and mine being allied together by Marriage sundry times within these few Years. Hearing of Treason does not make one guilty of it.

Hare. But had not *Wyat* and you Conference together sundry times, at *Warner's* House, and in other Places. Master of the Rolls.

Throckm. It was as lawful for me to talk with *Wyat* then, as with any other Man, when I knew nothing of his Purpose, and I saw several of the Nobility talk with him familiarly in the Presence Chamber. Page 50.

Hare. But did not you consult with *Crofts*, and others, in *Warner's* House, about your traiterous Purposes, or what did you so often there?

Throckm. I confess, I did mislike the Queen's Marriage with *Spain*, and the coming of the *Spaniards* hither; and I learnt it from you, Mr. *Hare*, and others in the Parliament House, where I observ'd the whole Realm against it, tho' I was no Speaker there, but a Hearer. And I resorted to *Warner's* House, not to confer with *Wyat*, but to shew my Friendship to the Marquess of Northampton, who lodg'd there when he was enlarg'd. Acknowledges his Dislike of the Match with Spain.

Stanf. Did not you tell *Winter* that *Wyat* had chang'd his Mind?

Throckm. I did not tell him so; But if I did, what can you make of it?

Stanf. It proves that you were privy to *Wyat's* Treason.

Throckm. This might show that I knew *Wyat* repented him of an ill-devised Enterprize. But where

where is the Messenger or Message *Wyat* sent to me touching this Alteration?

Crofts's Confession urg'd against him.

Dyer. To prove you were concern'd in that Rebellion, there is *Crofts's* Confession, who says that he and you, and your Accomplices, often met about these Matters; and he made you privy to all his Determinations, and you told him you wou'd go into the West-Country with the Earl of *Devon* to Sir *Peter Carew*, accompanied with others.

He objects that *Crofts* ought to give his Evidence *viva voce*.

Throckm. *Crofts* is living and here this Day, why is he not brought Face to Face, to justify this Matter? And you cannot prove I knew of any of his Devices.

Att. Gen. Why did you advise *Winter* to land my Lord Privy Seal in the West-Country?

Throckm. *Winter* telling me, that the *Spaniards* were providing to bring their Prince hither; and that the *French* prepar'd to intercept his Passage; I reply'd, that in case of any Danger, it were good to land my Lord in the West-Country. But what doth this prove to the Treasons?

Vaughan's Confession read against him.

Then the Confession of *Cuthbert Vaughan* was read, concerning some Discourses he had with *Throckmorton*, about *Wyat's* rising in *Kent*, and Sir *Peter Carew* in the West; and of a Discovery that the Earl of *Devon* had made of the Design to the Lord Chancellor; and that *Throckmorton* shew'd him that he wou'd ride down into *Berkshire*, and meet his eldest Brother, to move him to take his Part.

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Stanf. Does not here appear evident Matter to prove you a Principal, who not only gave Order to Sir *Peter Carew*, and his Adherents, but also procur'd *Wyat* to make his Rebellion; appointing him when he shou'd attempt his Enterprize, and how they shou'd order their Doings from time to time?

Att. Gen. You lay in *London* as a Factor, to give Intelligence as well to them in the West, as to *Wyat* in *Kent*.

Objects that *Vaughan* is a condemn'd Man

Throckm. Who proves that besides this condemn'd Man? and what will he not say to save his Life? Then

Then *Vaughan* was brought into Court.

Sendal. Vaughan, is this your Confession?

Vaughan exam-
in'd upon
Oath *viva voce*.

Att. Gen. To give it the better Credit, I pray
Vaughan may be sworn. Which was done.

Vaughan. I confesse all that is there written is true.

Throckm. What Acquaintance was there between you and me?

Vaughan. I knew you as I did other Gentlemen.

Throckm. I pray observe the small Familiarity between *Vaughan* and me; nor did he bring me any Letter or Token, as he has also confesse'd; and were he not a condemn'd Man, can it be suppos'd I shou'd so frankly discover my Mind to him, in so dangerous a Matter, who had no other knowledge of him, than that I knew his Person from another; especially, when these Gentlemen who were my Familiars cou'd not depose any such Matter against me, upon their Examinations since their Imprisonment. And it is to be observ'd, when this *Vaughan* first accused me, he refer'd the Confirmation of this surmis'd Matter to a Letter sent from him to Sir *Thomas Wyat*, which Letter does not appear, nor any Testimony of the said *Wyat* against me. Also *Vaughan* saith that young *Edward Wyat* could confirm this Matter; and thereupon I made suit that *Edward Wyat* might be brought Face to Face, or otherwise examin'd, and I am sure he hath been willed to say what he would, and yet nothing is deposed by him against me, touching any Letter, or other Conferences. And *Vaughan's* Testimony is nothing worth by any Law, being a condemn'd Man; and by a Statute in the 6th of *Edward VI*, no Person shall be indicted and convicted of Treason, &c. but by two lawful Accusers, who at the time of the Arraignment (if living) shall be brought Face to Face, and avow what they have to say: And *Vaughan* is but one, and that most unlawful and insufficient. And remember, I pray you, how long and how often *Vaughan's* Execution hath been respited, and how often he hath

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Two lawful
Witnesses in
Treason to be
examin'd *viva*
voce in Court if
living.

hath been conjured to accuse (which by God's Grace he withstood till the last Hour) at what time perceiving there was no way to live, but to speak against me, or some other (his former Grace being taken away) did redeem his Life most unjustly and shamefully, as you see.

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Hare. What meant your often Meetings with *Vaughan*?

Throckm. They were by Chance, and yet they were no oftner than twice.

Part of the Prisoner's own Confession read against him.

Stanford reads part of *Throckmorton's* Confession, viz. That he had a Conference with *Wyat, Carew, Crofts, Rogers, and Warner*, as well of the Queen's Marriage with the Prince of *Spain*, as also of Religion. That *Throckmorton* had said he wou'd hinder the coming in of the *Spaniards* as much as he cou'd by Persuasion. That he had said the Clergy's Discipline might now rather be resembled to the *Turkish* Tyranny, than to the Teaching of the *Christian* Religion; and had discours'd of the *French* King's hindring the *Spaniards* coming hither.

Desires it may be read through.

Throckm. Since you have read that part which you think makes most against me, I pray you take the pains and read further.

But deny'd.

Stanf. It will be but loss of Time, and we have other Things to charge you withal.

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Duke of *Suffolk's* Confession read against him, who had been executed for the same Crime.

Then the Duke of *Suffolk's* Depositions were read against him (who was executed) importing, that the Lord *Thomas Grey* did inform the said Duke, that Sir *Nicholas Throckmorton* was privy to the whole Devices against the *Spaniard*, and was one that should go into the West-Country with the Earl of *Devon*.

Desires Lord Grey may come into Court, to whom the Confession refers.

Throckm. But why is not the Lord *Thomas Grey* produc'd against me? As to the Duke's Confession it is not material; for he refers the Matter to the Lord *Thomas's* Report, who, upon his Examination, hath acquitted me.

Charg'd with another Conspiracy.

Att. Gen. Besides the Treasons already mention'd, we shall make it appear, that *Throckmorton*, together with *William Thomas* and Sir *Nicholas Arnold*, did conspire the Queen's Death.

Arnold's

Arnold's Confession was read, affirming, that *Throckmorton* shewed him, as he was riding betwixt *Hinam* and *Crossland*, in *Gloucestershire*, that *John Fitz-Williams* was very much displeas'd with *Thomas*.

Arnold's Confession read against him.

Att. Gen. William Thomas devised that *John Fitz-Williams* should kill the Queen; and *Throckmorton* knew of it, as appears by *Arnold's* Confession.

Throckm. I desire *Fitz-Williams* may depose his Knowledge of this Matter in open Court.

Fitz-Williams appear'd.

Desires the Witnesses may give their Evidence *viva voce*.

Att. Gen. I pray he may neither be sworn or speak, we have nothing to do with him.

Throckm. Will you not hear the Truth that makes for me, as well as Untruth against me?

Court. Go your way, *Fitz-Williams*, the Court hath nothing to do with you; you wou'd not be so ready in a good Cause. Whereupon he departed, without being suffer'd to speak.

Witness appears, and the Court refuse to let him speak.

Court. *Wyat* hath grievously accused you.

Throckm. Whatever *Wyat* said in hope of Life, he unsaid at his Death; for upon the Scaffold he did not only purge the Lady *Elizabeth*, but all the Gentlemen in the Tower, saying they were all ignorant of that Commotion, in which Number I take myself.

Wyat acquits the Lady *Eliz.* and the Gentlemen in the Tower, at his Death.

Throckm. And now to you of the Jury; I will, for your better Satisfaction, shew you, that although you should believe all the Depositions laid against me, which I trust you will not, I ought not to be attainted of the Treason compriz'd in the Indictment, considering the Statute of Repeal the last Parliament, of all Treasons, other than such as be declared in the 25th of *Edward III.*, which I pray may be read to the Inquest.

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Prays the 25th of *Edw. III.* may be read.

Court. There shall no Books be brought, we know the Law without Book.

Court refuse.

Throckm. Do you bring me hither to try me by the Law, and will not shew me the Law? what is your Knowledge of the Law to these Men's Satisfaction who have my Tryal in hand?

Stanf. My Lord Chief Justice will shew the Law if the Jury doubt.

Hare.

Hare. We are not to provide Books for you.

Witness not allow'd to testify against the Crown antiently.

Throckm. May it please you, my Lord Chief Justice, I have heard, that among other good Instructions, her Majesty charg'd you to minister Justice indifferently; and notwithstanding the old Error amongst you, which did not admit any Witness to speak, or any other Matter to be heard in favour of the Adversary, where the Crown is a Party: Her Highness's Pleasure was, that whatsoever could be brought in favour of the Subject should be admitted to be heard; therefore you ought of right to suffer the Statute to be read, and also to reject nothing that can be spoken in my Defence.

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Court. You ought not to have any Books read here at your Appointment, the Judges sit here to inform the Court.

Recites the Statute of Repeal, and the 25th of Edw. III.

Throckm. You seem to give and offer me the Law, but in very deed I have only the Form of Law. But since I cannot have the Statutes read, I will guess at them, and pray you to help me if I mistake. By the Statute of Repeal, made the last Parliament, it is enacted, that nothing shall be construed Treason, Petit Treason, &c. but what is declared to be so by an Act made in the 25th Edward III; and that Statute hath these Words: *Whoever doth compass or imagine the Death of the King, or levy War against the King in his Realm, or being adherent to the King's Enemies, within this Realm, or elsewhere, and be thereof probably attainted by open Deed, by People of their Condition, shall be adjudged a Traitor.* Now you of the Jury, observe what things at this Day be Treasons, and how these Treasons must be try'd, viz. by open Deed, which the Law terms *Overt Act*. And where doth appear any open Deed of my being concern'd in any of the Treasons laid in the Indictment?

Overt Act necessary to convict a Person of Treason.

Stanf. There remain divers other Treasons at this Day at Common Law, which be not express'd by that Statute. But there is Matter enough prov'd against you, to bring you within the danger of that Statute.

Throckm. Pray express those Matters, for the Words

Words are, *And be thereof attainted by open Deed,*
by People of their Condition.

Court. By People of their Condition, is meant Who are meant
those involv'd in the same Crime, discovering by People of their
your Treasons, as *Wyat*, who is already attainted, Condition.

Throckm. I suppose the Law-makers understood these Words, *By People of their Condition*, Of the State and Condition of those Persons who shou'd be on the Inquest, to try the Party arraign'd: For what have I to do with *Wyat's* Acts, who was not near him by 100 Miles?

Court. *Wyat* is one of your Condition, i. e. one of your Conspiracy.

Throck. Well, since you, my Judges, will rule the Construction of these Words so strangely, I shall not stand longer upon them. But where does appear in me an open Deed, whereunto the Treason is specially refer'd?

Court. If several conspire together, and one of them commit the Treason, as *Wyat* did, the Law reputes it to be the Act of every of them.

The Act of one, the Act of the rest, who are privy to the Design.

Throckm. These be marvellous Expositions, and wonderful Implications, that another Man's Act, whereto I was not privy, shou'd be accounted mine; for *Wyat* has acquitted me, that I knew not of this Stir.

Court. You were a Procurer and Contriver of *Wyat's* Rebellion, tho' you were not with him in the Action; and the Law adjudges him a Traitor, who is privy to, or promises another to commit Treason. We have a common Case in the Law, if one, by Procurement, disseize you of your Land, the Law holdeth them both wrong Doers, and giveth Remedy as well against the one as the other.

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Throckm. As to the Case last cited, I have learn'd from you, Master *Hare*, and you Master *Stanford*, while you sat in the Parliament House, this Difference in these Cases: You there observ'd, That there is a Maxim in the Law which ought not to be violated; That no Penal Statute ought to be construed, or extended, or wrested, otherwise

Penal Statutes not to be extended beyond the Words.

wise than the simple Words and nude Letter of the same Statute doth warrant and signify. And amongst other notable Reasons given by you, Master Serjeant *Stanford*, in the Parliament House, why the said Maxim ought to be inviolable; you said, considering the private Affections, many times, both of Princes and Ministers, it wou'd be very dangerous to the Subject, to refer the Construction of Penal Statutes to any Judge's Equity, (as you term'd it) which might, either by fear of the higher Powers, be seduc'd, or through Ignorance or Folly be abus'd. And that is my Answer to the Procurement.

The Procurer of Felony is a Felon.

Bromley. He that doth procure another Man to commit Felony or Murder, the Law does adjudge a Felon or a Murderer; and in the Case of Treason it hath always been so taken.

Throckm. I promis'd no Man to commit Treason; but, for my Information, I desire to hear some Case so ruled. I confess, when there were Statutes in force, which provided that the Procurer and Abetter shou'd be deem'd equally culpable, as in the Reign of *Henry VIII*, you might bring the Procurer within the Compass of the Law; but these being repeal'd, you ought not. And as to Felony and Murder, they are triable and punishable at Common Law, and there the Judges may use their Equity, and determine as they think good; but in Treason it is otherwise, the same being limited by Statute Law, which I say and avow is restrain'd from any Judge's Construction, by the abovesaid Maxim.

Whether it shall be so in Treason.

Stanf. There is a Case in *Richard III*'s Time, where the Procurer to counterfeit Money was adjudged a Traitor, and the Law was as it is now.

Throckm. At another time such Procurer was adjudg'd neither Felon nor Traitor, and there are two Cases for me for one against me.

Bromley. Where one took the great Seal from one Writing, and put it to another, he was adjudg'd a Traitor in *Hen. IV*'s Time, and yet this was not within the expresse Words of *Edw. III*.

Throckm.

Throckm. In the self same Case of the Seal, Justice *Spilman* would not condemn the Offender, but did reprove that former Judgment, by you last remembered, as erroneous.

Hare. It is proved you did talk with *Wyat* against the coming of the *Spaniards*, and devis'd to interrupt their Arrival, and promis'd you wou'd do what you could against them. Whereupon *Wyat*, being encourag'd by you, did levy a Force, and attempted War against the Queen's Royal Person.

Throckm. It was no Treason, or Procurement of Treason, to talk against the coming of the *Spaniards*; or to say I wou'd hinder their coming as much as I could, understanding me rightly as I meant it. And as to *Wyat's* Doings, he purg'd me at his Death, when it was no time to report Untruths. And, my Lord, there is a Proviso in the Statute of *Edw. III.* That if any other supposed Treason shall come in question, than is express'd in the said Statute, the Justice shall forbear to adjudge the said Case, until it be shew'd to the Parliament.

Saunders. The Law, in Cases of Treason, accounts all Principals; therefore a Man offending, either by Covert Act, or Procurement, whereupon an open Deed hath ensued, as in this Case, is adjudged by the Law a principal Traitor.

Throckm. Notwithstanding this racking of the Word Procurement, I am not in the danger of it; for it doth not appear, by any Deposition, that I procur'd either one or other to attempt any Act.

Hare. I know no mean so apparent, to try Procurement, as Words.

Throckm. The Statute of *Edw. VI.* makes a remarkable difference between Words and Acts: It says, whoever doth compass or imagine to depose the King, &c. by open preaching, or express Words or Sayings, shall, for the first Offence, lose all his Goods and Chattels, and suffer Imprisonment. But whoever, by Writing, Cyphering, or *Art*, shall so do, shall for the first Offence be adjudged a Traitor. Here the whole

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All the Conspirators guilty of Treason, if any of them proceed to Action.

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Whether Words shall be deem'd Overt Acts.

Realm, and all of you, before this, understood Words and Acts diversly; and therefore the Parliament did assign diversity of Punishments. And *Wyat* was not reputed the Queen's Enemy when I talk'd with him last, nor did our Discourse tend to any Treason, or procuring of Treason. Therefore I pray you of the Jury, Note, tho' I argue the Law, I alledge my Innocency as the best Part of my Defence. And who doth depose there passed any thing between *Wyat* and me, after he discover'd himself an Enemy? What hinder'd me repairing to *Wyat* or the Duke of *Suffolk*, who was in my own Country, whether I might have convey'd myself unsuspected?

Inglesfield. It is true, you were at my House when the News of this Rebellion was brought, and, to my Knowledge, ignorant of these Matters.

Chief Justice
sum'd up the
60 Evidences.

Chief Justice *Bromley* sum'd up the Evidence; but omitting great part of the Prisoner's Defence, the Prisoner reminded him of it, and took leave to repeat it.

Sendall, Clerk of the Crown. My Masters of the Jury, you are to enquire if the Prisoner at the Bar be guilty of these Treasons; and if you find him guilty, you shall enquire what Lands and Tenements, Goods or Chattels he had at the Day of his Treasons committed, or at any time since.

Prisoner permitted
to speak to
the Jury afterwards.

Then the Prisoner was permitted to address himself in a short Speech to the Jury; and he desir'd of the Court, That neither the Queen's Council, or any other, might have access to the Jury, till they deliver'd their Verdict in open Court. And the Court gave Order accordingly.

He is acquitted.

The Court adjourn'd till the Afternoon. And about five in the Afternoon the Jury came into Court, and brought the Prisoner in Not guilty.

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Bromley. Have you consider'd the Evidence?

Whetstone, the Fore-man. We have thoroughly consider'd the Evidence, and the Prisoner's Defence, and have found him Not guilty, agreeable to our Consciences.

Throckm.

Throckm. May it please you, my Lord Chief Justice, to pronounce Sentence for my Discharge.

Bromley. The Court doth award that you be discharg'd, paying your Fees. Notwithstanding, Master Lieutenant, take him with you again, for there are other Matters to charge him with. Prisoner re-manded into Custody.

Then the Prisoner intreated the Bench to become Suitors for him to the Queen, that she wou'd pardon his Presumption in discoursing about her Marriage.

Mr. Attorney General mov'd the Court, That the Jury might give 500 l. a piece Security, for having brought in such a Verdict. Mr. Att. Gen. desires the Jury may give Security.

The Tryal of JAMES Earl of Bothwell, for the Murder of HENRY Lord Darnley, Husband to MARY Queen of Scots, at the Senate House of Edinburgh, April 12, 1567. Before the Noble and Potent Lord Archibald Earl of Argyle, Lord Campbel, and Lord Justice General.

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IN this Court appear'd personally John Spence and Robert Crichton, Advocates for the Queen. And there the said John Spence produc'd the Queen's Commission, for the Tryal of the said James Earl of Bothwell, with the Summons's and Returns indors'd. Commission for trying the Earl of Bothwell.

The Commission recites, " That whereas
" Matthew Earl of Lenox, Father of the deceased
" King, had asserted that James Earl of Both-
" well, and some others, had committed the said
" Murder ; That the Truth thereof might be
" try'd, the Queen, by Advice of her Privy
" Council, and also at the humble Request
" of the said Earl of Bothwell, did order a
" Court of Justice to meet in the Senate House
" of Edinburgh, on the 12th of April next, to
" enquire

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“ enquire of the said Offence: And further,
 “ did require the Sheriffs to summon the said
 “ *Matthew Earl of Lenox*, and all other her Sub-
 “ jects, interested in the said Cause, to appear
 “ at the Day and Place aforesaid, and prosecute
 “ the said Earl of *Bothwell*, dated the 25th of
 “ *March*, in the 25th Year of her Reign, 1567.

Page 63.
 The Indict-
 ment.

The respective Sheriffs return'd, That they
 had caus'd the said Earl of *Lenox*, and all other
 her Majesty's Subjects, interested in the said
 Cause, to appear and prosecute. The Indict-
 ment set forth, “ That the said late King, the
 “ Queen's Majesty's most dear Spouse, being at
 “ his House near the Church, in the Fields of
 “ the City of *Edinburgh*, taking his Rest:
 “ He, the said *James Earl of Bothwell*, in the
 “ dead of the Night, did treasonably set Fire to
 “ a great quantity of Gun-powder in the said
 “ House, by the violence whereof, the whole
 “ House was blown up into the Air, and the
 “ King thereby traiterously, cruelly, wilfully,
 “ and by premeditated Felony kill'd and mur-
 “ der'd, &c.

Earl of *Lenox's*
 Protestation.

Bothwell acquit-
 ted.

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James Earl of Bothwell was call'd and appear'd.
 Then *Matthew Earl of Lenox*, and the Prosecutors,
 were call'd. And *Robert Cunningham*, in behalf
 of the Earl of *Lenox*, exhibited a Protestation,
 That the Time appointed for the Tryal being so
 short, he cou'd not be ready with his Wit-
 nesses. And that he cou'd not with Safety ap-
 pear at the said Tryal. No other Prosecutor
 appearing, the Court proceeded, and acquitted
 the said Earl of *Bothwell* of the Murder.

The

The Tryal of THOMAS Duke of Norfolk, January 16, 14 Eliz. A. D. 1571. Before George Earl of Shrewsbury, Lord High Steward, Reynold Earl of Kent, and twenty three other Peers summon'd for that purpose.

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THE Indictment sets forth, " That the said
 " Thomas Duke of Norfolk, on the 22d Day
 " of September, in the 11th Year of the Queen,
 " and diverse other Days and Times before and
 " after, at Charter-house in the County of Mid-
 " dlesex, did conspire, compass and imagine the
 " Death of the said Queen; and to raise Re-
 " bellion, subvert the Government, and endea-
 " vour a Change in the Religion establish'd. And
 " that in order to the effecting his said Designs;
 " the said Duke, well knowing that Mary, late
 " Queen of Scots, had laid claim to the present
 " Possession of the Crown of England; and had
 " affirm'd, that our said Sovereign Lady Queen
 " Elizabeth had no Title to the same: And also
 " well knowing that the said Queen of Scots as-
 " sum'd the Arms of England; he, the said Duke,
 " the 23d of September, in the Year aforesaid,
 " and diverse other Days and Times before and
 " after, at the Charter-house aforesaid, had traite-
 " rously endeavour'd, without the Consent of
 " his said Sovereign Queen Elizabeth, to be join'd
 " in Marriage with the aforesaid Mary late Queen
 " of Scots, and to that end had written several
 " Letters, and sent several Pledges and Tokens
 " to the said Queen of Scots, and sent her diverse
 " Sums of Money, which the said Mary had re-
 " ceiv'd. And all this, notwithstanding the said
 " Duke had been expressly forbidden by his said
 " Sovereign Queen Elizabeth, to hold any Corre-
 " spondence with the said Mary, concerning Mar-
 " riage; and altho' he had, by several Writings

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The Indict-
 ment charges
 him with a De-
 sign to marry
 the Queen of
 Scots.

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Charg'd with
aiding the Earl
of Northumber-
land, and other
Rebels.

With adhering
to the Queen's
Enemies.

Charg'd with
corresponding
with the Pope
and the King of
Spain, and pro-
moting an Inva-
sion.

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" and Instruments, under his own Hand, pro-
" tested against his Proceeding in such Marriage.

And further, " That the said Duke, on
" the sixth of *August*, in the 12th Year of the
" Queen, had traiterously caused to be sent and
" delivered unto *Thomas* Earl of *Northumberland*,
" and *Anne* his Wife, and *Charles* Earl of *Westmor-*
" *land*, who had been in open Rebellion against
" her Majesty, and were out-law'd for the same,
" and fled to *Antwerp* in *Brabant*, several Sums of
" Money, to aid, assist, and support the said Earls
" of *Westmorland* and *Northumberland*, &c.

And further, " That the said Duke, on the
" 16th of *July*, in the 13th Year of the Queen,
" had adher'd to, aided and assisted, *James* Duke
" of *Castel-le-Roy*, the Earl of *Huntly*, and others
" the Queen's declared Enemies.

And further, " That the said *Thomas* Duke
" of *Norfolk*, the 10th Day of *March*, in the 15th
" Year of the Queen, and diverse other Days and
" Times, at *Charter-house* aforesaid, well know-
" ing the Bishop of *Rome* to be a publick Enemy
" to the said Queen, had traiterously procur'd
" one *Rodolph*, a foreign Merchant, to send to the
" aforesaid Bishop of *Rome*, to *Philip* King of
" *Spain*, and to the Duke of *Alva*, to obtain of
" the said Bishop of *Rome* certain Sums of Money,
" towards raising an Army to invade *England*.
" And that the said King of *Spain*, by the Media-
" tion of the said Duke of *Alva*, did send into
" this Kingdom an Army of *Germans* to make War
" upon the Queen. And that the said Duke of
" *Norfolk* did conspire and agree with the said
" *Rodolph*, to raise Forces within this Kingdom
" and join the said Army, in order to make open
" War against his said Sovereign Queen *Elizabeth*,
" to set the said Queen of *Scots* at liberty, to de-
" pose Queen *Elizabeth*, and at the same time to
" join himself in Marriage with the said *Mary*
" Queen of *Scots*.

And further, " That the said *Rodolph* having
" fram'd three Letters, in the Name of the said
" Duke of *Norfolk*, one to the Bishop of *Rome*,
" another

" another to the Duke of *Alva*, and a third to
 " the King of *Spain* : The said Duke of *Norfolk*,
 " on the 20th of *March*, in the 13th of the
 " Queen, at *Charter-house* afore said, did traite-
 " rously send and acknowledge to the *Spanish*
 " Embassador, That the said credential Letters,
 " composed in his Name, were as valid, to all
 " Intents and Purposes, as if the said *Thomas Duke*
 " of *Norfolk* had writ them with his own Hand.

" That the said *Rodolph*, the 24th of *March*, in
 " the 13th of the Queen, set out from *Dover*,
 " by the Order of the Duke of *Norfolk*, to exe-
 " cute his treasonable Embassy to the said Duke
 " of *Alva*, and the Bishop of *Rome*. And that
 " the said *Rodolph* caused a Letter in Cyphers to
 " be sent from the Duke of *Alva* to the Duke of
 " *Norfolk*, which the said Duke of *Norfolk*, on
 " the 18th of *April*, in the 13th of the Queen,
 " traiterously receiv'd, at the *Charter-house* afore-
 " said, and gave it to his Servant, *William Baker*,
 " to decypher. And that the said Duke of *Nor-*
 " *folk*, afterwards on the 25th of *April*, in the
 " 13th of the Queen, traiterously read over the
 " said Papers, after they were decypher'd, and
 " retain'd and kept the same. In which treason-
 " able Paper was contain'd an Account of the
 " kind Reception the said *Rodolph* met with to
 " his traiterous Messages, and a Request from
 " the Duke of *Alva*, That his Friends wou'd be
 " in a readiness, when a foreign Power shou'd be
 " sent over.

And further, " That the said Duke of *Norfolk*,
 " the 16th of *June*, in the 13th of the Queen,
 " receiv'd a Letter from *Pius Quintus* Bishop of
 " *Rome*, wherein he promised Aid and Assistance
 " to the said Duke of *Norfolk*, in executing his
 " traiterous Designs afore said, contrary to his
 " Allegiance, the Queen's Peace, &c.

Duke. I desire I may have Council ; in the first
 of *Henry VII*, *Humphry Stafford* was indicted of
 High Treason, and had Council.

Chief Justice of
the Common
Pleas.
No Council al-
low'd.

Sir *James Dyer*. The Question there was, whether he shou'd be allow'd Sanctuary, which was Matter of Law ; but our Books forbid allowing Council in the Point of Treason.

Duke. I beseech you tell me if my Indictment be sufficient in Law ?

Lord Chief
Justice of the
King's Bench.

Catlin. If the Points laid in the Indictment are true in fact, they are all Treason.

Clerk of the Crown. How say'st, *Thomas Duke of Norfolk*, art thou guilty, &c.

Pleads Not
guilty.

Duke. Not guilty. Then he entreated my Lord High Steward and the Court, that he might have an equitable and fair Tryal : And that, altho' he confess'd he had been guilty of some Neglects in his Duty to her Majesty ; they wou'd remember rightly to distinguish between those Crimes, and those he now stood charg'd with ; and not infer, because he had been guilty of smaller Faults, he was also guilty of High-Treason.

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Barham, the Queen's Serjeant, open'd the Indictment, and insisted principally, That the Duke, knowing the Queen of *Scots* to claim the Crown of *England*, had, notwithstanding, contrary to the Queen's Command, and his own express Promise, endeavour'd to join himself in Marriage with the said Queen of *Scots*, and to advance her pretended Title to the Crown ; which cou'd not be without a Purpose to depose Queen *Elizabeth* ; and, consequently, to bring her to Death and Destruction.

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The Duke ask'd, if all the Treasons laid in the Indictment were founded upon the Statute of *Edward III*. Mr. Serjeant, and Mr. Attorney General answer'd they were.

Serj. Barham. We pray he may answer whether he knew the *Scotish* Queen pretended Title to the present Possession of the Crown of *England*, and that she made no Renunciation of that usurp'd Pretence ?

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Duke. I know that a Renunciation of that Claim was offer'd, and upon certain Causes respited.

respited. Besides, this Claim was made in her Husband's Time when she was Covert Baron.

Serj. You know also, that since her Husband's Time, she hath not renounced that Claim; and you had special Instructions to require it, when you were Commissioner at York, about the Matter between the *Scotish* Queen, her Son, and the Nobility of Scotland.

Duke. A full Renunciation was offer'd when the Lord *Burleigh* was with her; and our Commission was ended, and the Matter brought up hither.

Serj. Your self was the Cause that Commission broke up: You dealt indirectly, without regard to your Oath, then specially taken for that Commission, or of your Oath as a Counsellor. And when you were, by your Commission, to examine the *Scotish* Queen's Adulteries, and her murdering her Husband, you practis'd with the Agents of the *Scotish* Queen; and told them, by way of Advice, that if these Matters went forward to Hearing, the Earl of *Murray*, and his Side, would disclose all the foul Matters they could, both by her Letters, and other Evidences, to her Dishonour. And that the Queen's Majesty had some Counsellors about her, that if these things were once produc'd, would cause them to be publish'd, in order to move foreign Princes to forbear suing for her. And this was the Cause of the Dissolution of your Commission.

Then was produc'd the Examination of the Bishop of *Rosse*, taken at the Tower, Novem. 5. 1571. Bishop of *Rosse*'s Examination.

Wherein he says, That being in private with the said Duke at York, when he was Commissioner there, the Duke told him he bore a good Will to the Queen his Mistress: And that having talk'd with the Earl of *Murray*, and seen the Letters they had to produce against the said Queen, and other Defences, there would be such Matter prov'd against her that would dishonour her for ever. And if it were once publish'd, the Queen's

Queen's Majesty of *England* would be counsel'd by such as lov'd not the Queen his Mistress, to publish the same to the World, and send Embassadors to acquaint foreign Princes therewith, that they might make no further Suit for her Delivery ; and perhaps greater Rigour might ensue to her Person ; therefore the Duke advis'd him to confer with *Ledington*, and find out some way to stay the Rigour intended, and promis'd to use his Endeavours to that Purpose. That at this Conference, the Duke did often insinuate the good Will that he did bear to the Queen of *Scots*, but spoke nothing to him particularly of the Marriage at that time, but refer'd all to *Ledington*. That after this, *Robert Melvin* came to the Queen at *Bolton*, to give an Account of what had pass'd between the Duke and *Ledington*, as they were hunting ; and that *Ledington* had encouraged the Duke to attempt the Marriage, as *Ledington* told the said Bishop of *Rosse* afterwards. That the Duke being at *Hampton-Court*, employ'd one *Ligons*, and also the Lord *Lumley*, to advise with him the said Bishop of *Rosse* about the Marriage. That Queen *Elizabeth* had been inform'd of his intended Marriage with the Queen of *Scots*, but that he had satisfied her, and still pursu'd it. That the Duke treated with the Earl of *Murray* and *Ledington* at *Hampton-Court*, by whose Advice *Melvin* was sent to the Queen of *Scots* at *Rippon*, to move the Matter upon the Earl of *Murray's* Behalf, with a full Determination that the Earl of *Murray* lik'd of it. That he the said Bishop of *Rosse* afterwards heard that *Murray* alledg'd he sent this Message for fear of some Enterprize against him at *Northallerton* in his Return to *Scotland*.

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Duke. As for *Ledington* and the Bishop of *Rosse*, I am not to answer for their Speeches to me, but for my own.

Serj. The Bishop accuseth you of your own Speeches.

Duke. He is a Scot.

Serj.

Serj. A Scot is a Christian Man.

Duke. At my being at York in Commission, edington, and the Bishop of Rosse, both mov'd me to compound the Matter: I told them our Commission was only to hear and report; and if they would compound Matters, they must devise the Means themselves, and make Offers, and we would advise the Queen's Majesty thereof. If it be otherwise, let my Letters be look'd in; but if the Bishop of Rosse, for Fear or Malice, have said untruly: If being a Scot, he care not how many *Englishmen*, by his false Testimony, he bring to Destruction; I beseech you let not that hurt me.

Then was read a Letter of the Earl of Murray's, being an Answer to another Letter which had been sent him, to enquire what he knew concerning the Duke of Norfolk's Practices as to the Commission at York, and the intended Marriage.

In which Letter the Earl of Murray relates a private Conference between him and the Duke of Norfolk at York: At which the Duke advis'd him to compromise Matters, and that he should be tender of the Queen of Scots Honour; and that he should abstract her Letters that she might not be defam'd in *England*: But that afterwards, that Affair being adjourn'd to *London*, he was compelled to lay open the whole Matter; which the Duke resenting, he was apprehensive it would be difficult to return in Safety to *Scotland*, if he did not appease him; therefore he took an Opportunity, in some Discourse, he had with the Duke, to seem inclinable to promote the Marriage, and by that Management saved his Life: And therefore entreats Queen Elizabeth to have a favourable Opinion of him. It being out of pure Necessity that he was forc'd to feign an Assent to that Matter.

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Then was read a Letter from the Bishop of Rosse to the Queen of Scots: The Substance whereof was,

That

That he had learnt from the Duke, that Queen *Elizabeth* did not design to bring her Cause to any Determination, but to hear what the Earl of *Murray* could alledge against her, in order to bring her into Contempt and Disgrace with the People of *England*; for that Queen *Elizabeth* was in some dread of her: As she was supported by her Uncles in *France*, &c. And therefore advis'd her to write a submissive Letter to Queen *Elizabeth*, refering all her Concerns to her; and that she rely'd more upon her Friendship, than that of her Uncles, or any other, &c.

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Duke. Here are three Witnesses produc'd against me; *Ledington*, the Bishop of *Rosse*, and the Earl of *Murray*; the Earl of *Murray* sought my Life; the other are not of Credit: Yet all these prove not, that I dealt in the Matter of the Marriage with the *Scotish* Queen, in Respect of her Claim to the Crown of *England*. If the Bishop of *Rosse*, or any other can say it, let them be brought before me Face to Face: I have often so desir'd it, but I could not obtain it.

Then part of the Bishop of *Rosse's* Examination, taken the fixth of November 1571, was read.

To the ninth Article he saith, That the Earl of *Murray* was in Fear to have been murdered by the way in his Return to *Scotland*: Whereupon this Examinant, by the Duke's Advice, did write to the Queen of *Scots*, that the Attempt might be staid, for that *Murray* had yielded to the Duke to be favourable; and the Murder should have been committed about *Northallerton*, by the *Nortons*, *Markenfield*, and others, as this Examinee was advertiz'd by the *Scotish* Queen's Servants that came from *Bolton*.

Duke. The Unkindness between *Murray* and me proceeded from his having reported that I sought the Marriage of the *Scotish* Queen; but for the Device of murdering of him, I was never privy to it, or heard of it till the *Whitsontide* after; when I heard it by the Bishop of *Rosse*; and that

that it was not to have been done by the *Nortons*, but by my Brother of *Westmorland* as he was hunting : And I heard, that the Earl of *Murray*, espying a great Company on the Hill side, imagin'd he should have been slain.

Then the Copy of a Letter sent by the Duke to the Earl of *Murray* was read ; wherein the Duke tells him ;

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That he had receiv'd his courteous Letter, whereby he did not only perceive that he was well affected for the Advancement of the Common-weal, and the uniting of this Island, but also his good Inclination towards him, which was a great Satisfaction. That as for the Marriagewith his Sister, he must deal plainly with him, as his only Friend ; that he had so far proceeded in the Marriage, hat he could not in Conscience revoke what he had done, or ever design'd it while he liv'd ; but that he could not with Honour proceed further, till he had remov'd some Stumbling-blocks : And that when this was done, all other things should be perform'd to the Satisfaction of the Earl ; and desires him to use all Expedition to prevent the Designs of their Enemies, who oppos'd the Match. And for the Particulars he refers himself to my Lord *Boid*, who was empower'd by the Queen of *Scots*, and himself, to treat with the Earl.

Duke. The Bishop of *Rosse* wrote this Letter. The Earl of *Murray* had wrote to me very humbly, That he was at my Command, &c. In answer to which I drew some general Heads, gave him Thanks ; and said the Nobility liked the Marriage, and that I wish'd no Man's Friendship more than his. The Bishop of *Rosse* added what he would of his own, and put it into this Form, and into a Cypher which I had not then.

Serj. The Duke himself complain'd to the Queen of the Rumour that was spread of his Design to marry the *Scotish* Queen, and desir'd it might be enquir'd into. And among other Expressions he then used, he said, To what end should

should I marry her, being so wicked a Woman, and such a notorious Adulteress and Murderer? I love to sleep upon a safe Pillow, and account my self as great a Prince at Home at *Norwich* as she, though she were in the middle of her Kingdom; and that the Revenues of the Crown of *Scotland* were not comparable to his own. And that should he seek to match with her (knowing that she pretended a Title to the present Possession of the Crown of *England*) her Majesty Queen *Elizabeth* might justly charge him with seeking her own Crown.

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Duke. I must give place to her Majesty's Testimony: And true it is I have at sundry times us'd such Speeches, but at that time I dealt not with that Marriage.

Then part of his own Examination, the 6th of *November* 1571, was read: Wherein he says,

That her Majesty charging him at *Tithfield* with his intended Marriage with the Queen of *Scots*, he did there acknowledge he had receiv'd Letters from her: And that the Matter had been mov'd, and written unto her, but he had not made any Conclusion in that Matter with her. And that thereupon her Majesty did charge him, upon his Allegiance, that he should not deal any further therein.

Serj. Now if we prove, that notwithstanding this Command, and his own Promise, he still proceeded more earnestly than before, tho' by his Letters it appears he thought her guilty of Whoredom, and the Murder of her Husband; and altho' he made little Account of the Kingdom of *Scotland*, or could be carried with the Love of her Person, which he never saw; to what end could he pursue this Marriage, but to advance and maintain that false and pretended Title to the present Possession of the Crown of *England*? And for the attaining thereof, to practise the Deprivation, Death and Destruction of the Queen's Majesty? And if we prove he intended to prosecute the Marriage with Force, this surely will bring him within

within the Compass of 25 Edw. III. For if that Force prevails, the Deprivation and Death of the Prince must follow.

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Then was produc'd a Letter written by the Duke of Norfolk, and the other Commissioners, to Queen Elizabeth from York. Wherein they tell the Queen;

That several Letters and Ballads had been produced, written with the Queen of Scots own Hand, that discovered such inordinate and filthy Love between her and *Bothwell*; her loathing and abhorring her Husband, who was murder'd; and the Conspiracy of his Death in such sort, as every good Man could not but detest and abhor. That they had enclos'd a Paper with the principal Points contain'd in those Letters, that her Majesty might judge whether they were sufficient to convict her of that detestable Crime, the Murder of her Husband; which, in their Opinion and Consciences, if the said Letters were written with her own Hand (as they believ'd they were) was very hard to be avoided.

Duke. This makes for me: It shews I so much mislik'd her that I could not deal in this Matter at York.

Serj. There were others join'd with you that you could not write otherwise.

Bannister's Confession was read, shewing the Duke had no Affection to the Person of the Queen of Scots.

Duke. I beseech you let Bannister be brought Face to Face. *Ledington*, and the Earl of *Murray*, broke the Matter to me, but I consented not. I pray you let them be brought Face to Face. I have often requir'd it.

Serj. The Law was so for a time; but since the Law hath been found too hard and dangerous for the Prince, it hath been repealed.

The Witnesses privately examin'd, and not brought Face to Face.

Part of the Bishop of *Rosse*'s Confession, the third of November 1571, was read: The Substance whereof was;

That the Bishop of *Rosse* demanding of the Duke what he intended to do in the Matter of the Marriage, if the Queen would not assent; the Duke said, he knew she would, though not at first, because most of the Council and Noblemen thought it not meet: And that after, when the Queen was offended with him, coming from *Southampton* he told the Bishop, he would depart into his own Country, and so would the Earls of *Arundel* and *Pembroke*, and there would advise with their Countrymen and Friends what was likeliest to advance the Cause. The Bishop said, the Queen would by Force fetch him out of the Country: He answer'd, that no Nobleman in *England* would accept that Charge at her Commandment; for he knew their Minds, especially those in the North, who would assist. And that if the Queen would first pursue him, he should have Friends enough to assist him, and the *Scotish* Queen would be safely provided for; for that was the principal Mark he shot at. Also *Liggons* told the Bishop, that the Duke was resolv'd to go through with the Matter by Force, if the Queen would not assent: And that at this time common Messages pass'd between the *Scotish* Queen and the Duke, and them in the North.

Duke. All is false: And if the Bishop were brought Face to Face, I might remind him of the Truth: Nor have I been suffered to bring forth such Witnesses, Proofs and Arguments, as might have made for my Purgation.

Then was read the Duke's Confession concerning Money lent; and the Bishop of *Rosse*'s Confession concerning Money sent by *Barthwick*, and of Money delivered to *Francis Bishop*.

Duke. This I deny not.

Serj. *Francis Bishop* was a Traitor.

Duke. I knew him not.

Serj. Now for the Matter of taking the Tower.

Duke. I have confess'd such a Motion was made to me, but I never assented to it.

Serj. You have given Advice as a Counsellor to the *Scotish* Queen against the Queen's Majesty; namely, when there were three Articles propos'd to the

the Queen of Scots, the one for the Delivery of her Son into the Queen's Custody; another for delivering up the *English* Rebels, and a third for delivering certain strong Holds in *Scotland* to the *English*; the Queen of Scots sent these Articles to you before she would resolve; and you gave Advice that she should in no wise deliver her Son, for it was against her own Safety; that it was dishonourable to deliver up the Rebels: And for the Holds, it were against the Safety of her Friends in *Scotland*, contrary to your Oath, as a Privy-Counsellor, to your own Sovereign.

Then *Hickford's* Confession was read to the third Article.

Duke. I deny that I advis'd her not to deliver up the Rebels; and for the other I confess my Error; but desire these my inferiour Faults may not be blended with the greater wherewith I am charg'd.

Here *Barker's* Confession, concerning a Design of conveying away the Queen of Scots, was read; which the Duke deny'd he was concern'd in.

Serj. The Duke made his Submission to the Queen, and promis'd upon his Faith and Allegiance never to deal with that Marriage, or with any other Matter touching the *Scotish* Queen; but before he subscrib'd this Submission, he made the *Scotish* Queen privy to it, and sent her a Double of it.

Duke. I confess it.

Then was *Hickford's* Confession, concerning the Prophecy of the Lion being join'd with the Lion, read; which the Council affirm'd the Duke had interpreted of his being marry'd with the Queen of Scots, for they both bear Lions in their Arms.

Cavendish's Deposition.

That at his several Journeys unto the Places of the Queen of Scots Abode, the Duke procur'd him

to labour the Cause of his Marriage with all Diligence. That he had heard the Duke affirm, before he would lose that Marriage, he would lose his Life: And that at his last, being at *Remming Hall*, he said, *Candish*, Nothing will undo us but the Rising of the Northern Lords; and that he fear'd they would rise.

The Duke deny'd the whole, but reproach'd him, that in his Necessity he came to borrow Money of him, and he had lent him some; that however he suspected he was a Man of no Honour, as he now experienc'd, and that he had warn'd his Friends to take heed of him: And when *Cavendish* began to justify himself, and put the Duke in Remembrance, the Duke gave him reproachful Words.

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Overt-Act is any Expression of a Man's Intention to commit Treason.

Who are interpreted to design the Death of the Prince.

A Usurper will never suffer a just Prince to live.

The Duke's Defence to the first Charge.

Attor. Gen. It hath been truly said, that to imagine, compass, or procure the deposing or Death of the Prince, is High-Treason, by 25 *Edw. III.* which Statute is but a Declaration of the Common Law. Overt-Act is the shewing of a Man's Mind: And when a Man by outward Speech or Deed hath utter'd it, it must needs be judg'd, that such was his Meaning. No Man is so bold to say expressly, he will kill the King; but those who go about it indirectly, as by stirring up Rebellion, or levying War within this Realm, are deemed to seek the Death of the Prince. Now to prove that the Duke of *Norfolk* hath imagin'd and compass'd the Death of the Queen: It hath been shew'd you that he sought to join himself in Marriage with the *Scotish* Queen, who pretends a Title to the Queen's Crown; which Title cannot be maintain'd without evident Purpose to depose the Queen's Majesty; And how could that have been done without compassing her Highness's Death and Destruction? For the Jealousy of an Usurper cannot suffer the just Prince to live.

Duke. There is a Maxim in Law, that Penal Statutes must be construed strictly, and no Penal Statute ought to be extended beyond the very Words: Now in all that my Accusers have depos'd, there is not one Word, That I went about any hurt to her Majesty's Person; or that I levy'd, or practis'd to levy any Power against her; or that
I have

I have done any of those Things which are Treasons by the Statute. Nor is any Overt-Act prov'd against me, but by the Bishop of *Rosse*, who is not a sufficient Witness. He is a Stranger, and a *Scot*: A Stranger can be no sufficient Witness, much less a *Scot*. For when there is Peace between the Queen and a foreign Realm, the People of that Realm may freely come and traffick here; but though there be Peace between *England* and *Scotland*; if a *Scot* come into *England*, he may be a lawful Prisoner. Had I intended a Rebellion, I could have avoided coming hither, I need not have put my Head into the Halter in the *Tower*. If Fear had mov'd me, and I had doubted my own Case, I might have shifted. As to my dealing with the *Scotish* Queen, so far as I dealt without the Compass of Treason, I have, with all Repentance and Humility, submitted myself to the Queen's Majesty; but in my dealing with her about Marriage, I pray you draw it not to such Intention, to advance her Title against the Queen; because, though she once made such Claim, yet considering what Amity hath since been between the Queen and her, to make her now an Enemy is hard. And when no Overt-Act can be proved against me, to bring me in thus by Arguments and Circumstances, I think is very hard.

A *Scot* coming into *England* might have been made Prisoner in time of Peace.

Attor. Gen. There is another Fact I shall give you in Evidence, which most evidently proveth the Duke of *Norfolk's* Imagination and Compassing to depose and destroy the Queen. The Duke, well knowing that *Pius V.* the Bishop of *Rome*, is the Queen's notorious Enemy, did confer with one *Rodolph* a Merchant Stranger, to go over Sea to the Duke of *Alva*, and the Pope, in the Name of the *Scotish* Queen, and the Duke of *Norfolk*, to procure Power to invade this Realm, for the Advancement of the *Scotish* Queen's false Title: And the Duke promis'd to move her Friends to levy such Power as they were able, to assist the Strangers when they came in. This is flat Treason.

To maintain this Charge, the Bishop of *Rosse's* Confession, the third of *November*, to the fifth Article, was read: As also to the seventh and twenty third Articles.

Duke. I never saw any Letters from the Pope, but one, which I will speak of anon.

Then the Bishop of *Rosse's* Confession, the 23d of *October*, and *Barker's* Confession, were read.

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Duke. What was delivered to *Barker* I know not : I am sure they will not say they deliver'd it me ; or that I receiv'd any such Letters or Instructions. The Bishop of *Rosse* sent me a Letter of the *Scotish* Queen's together with a Letter of his own. In her Letter she complain'd of her own Subjects, and said she would seek other means for her Relief. I mislik'd all those Devices, and advis'd the *Scotish* Queen to depend only on her Majesty : Or else, if she would take any other Course, both I, and all her Friends in *England*, would give her over. And it is not true that *Barker* made me privy to any such Message as has been alledg'd.

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The Rack us'd
in Qu. *Eliz.*
Reign.

Mr. Treasurer, and *Mr. Chancellor* of the *Exchequer* were sworn, and depos'd, That *Barker* made his Confession freely. And *Mr. Wilson* depos'd, That he was not once in the Prison where the Rack was ; but the Duke said, *Barker* saw where his Fellow had been.

The Duke's
Defence as to
sending of *Rodolph* to the
Pope, &c.

Duke. Touching *Rodolph's* Coming to me, I have indeed confess'd it. I was bound in a Recognizance of 1800 l. to *Rodolph*, for my Lord *Arundel*, and my Brother *Lumley* : I sent to him to desire him to cancel the Recognizance, and I would give him twenty Yards of Velvet : He would not ; but *Barker* told me he desired to speak with me : I thought his coming would be suspicious, because he was in Trouble at my last Trouble ; and *Barker* promis'd to bring him to me secretly. *Rodolph* came to me and told me of his Trouble, and discours'd of the *Scotish* Queen ; and that he should deal with the Duke of *Alva* for Money for her Use, and for Necessaries, as he had done before. He also pray'd my Letters, in the *Scotish* Queen's Favour, to the Duke of *Alva* ; but I put him off, and would not write. I delivered a Writing to *Barker* I confess, but it was only about my Recognizance. I dealt not
with

with any such Matter as is alledg'd against me, or receiv'd any other Instructions, but only as I have said about my own Matters.

Attor. Gen. Barker telleth you plainly what the Instructions were: It was to King Philip for Men, and to the Pope for Money.

Duke. Barker hath confest himself a Traitor, and therefore no sufficient Witness.

Attor. Gen. You shall hear the Bishop of Rosses Confession, who was in Prison, and knew not what Barker had said.

Then was read Rosses Confession of that Matter: Also Barker's was read to the same Matter.

Attor. Gen. Thus it is plainly prov'd; and if they say true, as it cannot be that they can so agree if it were not true; then can it not be deny'd, that the Duke is guilty of all this Treason.

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Duke. Here is too much for me at once to answer without Book. It is said, that there are two or three Witnesses against me, whereas there is indeed but one Witness: For Rodolph said it to the Bishop of Rosses, and from him the Bishop of Rosses told it to Barker, and so from Mouth to Mouth; they are all but one Witness. It is said that ten thousand Men, whereof three or four thousand were to be Horsemen, were to be landed at Harwich. I am not of so little Skill that I would have three or four thousand Horsemen landed in Essex; a Country full of Lanes, Ditches and Marshes. I should have chosen some other Country, if I had been so minded: Besides, no County in England is more replenished with Protestants, or of better Ability, or more likely to withstand the Papists: Nor had I provided Armour, Arms, or Ammunition, or confer'd with any of my Friends to take part in this Matter. Whereas they say I was content to affirm the Letters of Credit; they devis'd it among them to deal with the Spanish Embassador. I was angry with Barker for going to him in my Name, and he excus'd it, and said he could not otherwise content the Bishop of Rosses and Rodolph. I would they might, in their private Examinations, have been brought Face to Face with me; they have confest'd

The Duke's Defence as to the Invasion.

Treason themselves, and would bring me in with them. I am hardly handled ; I have been eighteen Weeks committed, and can speak with no Body : If I might have had them Face to Face, and been allow'd to bring forth my Proofs, I would have brought forth direct Matter and Proofs, and therewith made them remember themselves.

Attor. Gen. You shall hear your own Confession agreeing with them.

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Here was read the Duke's Confession, *October 10. Interrog. 58.*

Duke. I saw the Instructions indeed : They sought to have it thought I was a Catholick to serve their purpose, and did put it in of themselves, but I allow'd it not. I would rather be torn with wild Horses than forsake my Religion.

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Solicit. Gen. I will deal with the Matter of *Rodolph's* Message, and the Effect thereof, and the Duke's adhering to the Queen's Enemies and Rebels. In this Matter of *Rodolph* hath been laid before you a plain Plot for a Rebellion and Invasion of the Realm, set forth in the *Scotish* Queen's Letter, which was decyphered by *Hickford*, by the Duke's Commandment. *Rodolph* went over to the Duke of *Alva*, and from thence to the Pope. He return'd Answer of his Message, and gave Advertisement to the Duke. Did not he send his Answer concerning the very Instructions that have been alledg'd, and the Matter of Treason, and not of a private Cause ? Sent he not Answer to the Duke by the Name of *Quarante* ? Would *Rodolph* make Answer to, and advertize him that never sent him, and of a Matter that he never sent him about ? The Bishop of *Rosse* after this sent over a Servant of his, one *Charles Bayly*, to fetch certain Books that were printed in those Parts, containing very seditious Matter. Therein is convey'd to the *Scotish* Queen a Title to the Crown of *England*, a Descent above the Conquest, and so labouring to impair the Interest of all our Kings that have reigned since the Conquest. Then the Judgment of the Right of the Crown of this Realm is reduc'd to an universal Law, which they call *Jus Gentium*. And of that universal Law they

A Title deriv'd
to the *Scotish*
Queen above
the Conquest.

they establish one universal Judge, whom they insinuate to be the Pope, whose Bulls you see have pass'd in Prejudice of the Queen's undoubted Right. There were Letters taken between the Bishop of Rosse and Charles Bayly, mentioning the Recovery of Rodolph's Packet. In this Packet was the Advertisment of the Success of the Voyage from Rodolph to the Duke, by the Name of 40. This Letter of Rodolph's was sent to the Duke from the Bishop of Rosse by Barker: Barker delivered it to the Duke, from whence it was sent back again to the Bishop of Rosse by Cutbert, and by Cutbert it was decypher'd and carried again to the Duke by Barker: Upon this Occasion Cutbert was sought for; the Duke convey'd him away, which he hath confess'd. If this be thus, then was Rodolph sent by the Duke, and to such end as the Letter bringeth Answer of.

Here was read Charles Bayly's Letter and Confession.

Duke. Where they say this Message was sent by my Privity, by Reason that I was meant by 40, I deny it. As for the taking the Packet, I knew nothing of it; the Letter I never saw in Cypher: Barker brought me a Decypher, telling me that 40 was for me, and 30 for the Queen of Scots; and in the Letters decypher'd did appear, that the Duke of Alva had promis'd Aid of Money for the Scottish Queen, for her Necessities. When I heard of this, I mislik'd this Dealing with the Duke of Alva, having before refus'd to write to him in the Matter, at Rodolph's Request: And I threaten'd Barker if he so dealt any more with me. The Letters might be to me, as Barker said, but I knew not so much.

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Then Part of Barker's Confession, and the Bishop of Rosse's Confession, was read.

Duke. Barker and Cutbert might make the Letter themselves, and put in and out what they list.

Solicit. Gen. Why did Rodolph write you any Letter at all?

Duke.

Duke. I know not : *Barker* presented me the Letter out of Cypher, and I had not the Cypher, nor saw any such Letter as you alledge.

Solicit. Gen. The Pope also sent Letters to the Duke, and the *Scotish* Queen, that he lik'd well of the Enterprize : The Duke himself hath confess'd such a Letter.

Duke. *Barker* indeed brought me about fix or seven Lines, written in a *Roman* Hand, in *Latin*, beginning thus, *Deleſte Fili, Salutem* : I ask'd what it was, and *Barker* told me it was a Letter from the Pope to me ; wherewith I was offended, and said, What have I to do with him that is an Enemy to my Religion and Country ? And *Barker* excus'd it, and said, *Rodolph* had procur'd it for his own Credit.

Solicit. Gen. The Duke receiv'd it, and read it, and said, *Rodolph* hath been at *Rome*, I perceive nothing will be done this Year. By this it appeareth, that he reprov'd not *Barker* for bringing it to him : Would he have brought it to him a second time, if the Duke had been angry with him for it at first ?

Then was read *Barker's* Confession to the 8th Interrog.

Duke. *Barker* is not of Credit ; he accuseth me falsely.

Solicit. Gen. I have one thing more to say from her Majesty's own Mouth, but not meet here in open Presence to be uttered, because it toucheth others : But by her Highness's Order, we pray that the Lords who are of the Privy-Council will impart it to your Lordships. This Plot was discovered in *Flanders* by the Embassador of a foreign Prince, and by a Servant of his brought to her Majesty's Intelligence, who disclosed the whole Treason in such Form as hath here been proved unto you.

Wilbraham, Attorney of the Court of Wards. There remains yet something unspoken to. Whereas the Earl of *Westmorland* ; the Earl of *Northumberland* and his Wife ; *Richard Norton*, and others in the North of *England*, rais'd Rebellion, and levy'd open War against the Queen, and being defeated, fled into *Scotland*, and there were receiv'd by the Duke of *Chastelleroy*,
the

the Lord *Harris*, the Lord *Hume*, the Lord *Buccleugh*, and others ; and by them comforted and detain'd against the Queen's Majesty, requiring to have them delivered. Her Majesty being deny'd to have them restored, proclaim'd War, and actually made War against the Detainers of those Rebels, and drove the Rebels out of *Scotland*. The Duke knowing all this, yet did adhere unto, comfort and relieve the said Rebels, and procured Money to be distributed to them ; which is manifest Treason : And knowing this to be true, he adhered to, comforted and relieved the said Lords of *Scotland*, the Queen's Enemies, Receivers and Detainers of her Rebels : And this also is Treason.

The Rebels being reconcil'd to the *Romish* Church, wrote to the Pope for his Assistance, who sent them a Supply of Money ; and the Duke of *Norfolk* gave his Advice and Assistance in conveying it to them, though he was disappointed, and the Money was intercepted before it came to them ; and that the Duke sent them Money at other times.

The Duke still insisted, that the Witnesses had confess'd themselves guilty of High-Treason, and therefore not to be credited ; and that they were Foreigners, and therefore not competent Witnesses.

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Catlin. None of them are Out-law'd, Attainted or Indicted. And *Bracton*, the Author you have quoted, says, a Stranger, or a Bondman, may be a Witness : And to this all the Judges agreed.

Who may be Witnesses in Treason.

Duke. If you can prove by any Overt-Act I have directly touch'd the Prince's Person, or done any of those things to which the Statute of 25 *Edward III.* extends, I will yield my self Guilty. If any thing be doubtful, the Statute referreth it to the Judgment of the Parliament.

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Attor. Gen. The Law of Treason hath ever been largely construed for the Prince's Safety. Think you that practising to levy War within the Realm is not Treason, and a compassing of the Prince's Death ? Sir *William Stanley* did but send *Clifford* over Sea to enquire what *Perkin* was ; that if he thought *Perkin* was such a Man as he was said to be,

be, he would take his Part. And this was adjudg'd Treason, and a compassing the King's Death.

Here *Barker's* Confession was read, concerning the conveying the Money to the Rebels, and the Bishop of *Rosse's* Confession of the same Matter.

Wilbraham. You hear how the Money was procur'd ; how it was to be distributed by the Duke's Order, and Thanks written by the Countess of *Northumberland* for the Receipt of it. You shall hear that after the Practice of the Marriage, it was a general Rule between the *Scotish* Queen and the Duke, that the Bishop of *Rosse* should never propose to the Queen's Council, or deal in any great Matter, but by the Advice and Directions of the Duke of *Norfolk*.

For Proof of this the Deposition of the Bishop of *Rosse* was read.

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Wilbra. Now to prove that you adher'd to and aided the Queen's Enemies.

Here *Barker's* Confession, and *Hickman's* to the same Point, was read :

As also *Bannister's* ; importing, that the Duke had convey'd a Packet of Letters from the *French* Embassador to the *Scotch* Lords.

Duke. I confess I caus'd the Letters to be sent, but that I procur'd the Letters to be written, I remember not.

Wilbra. As to the sending Money to relieve the Queen's Enemies ; the *French* Embassador had fourteen hundred Crowns ready to relieve them, which he sent to the *Scotish* Queen. She would have had the Duke make it up three thousand Crowns, and sent a thousand her self, and refer'd the Direction of all to the Duke : He having the Charge of all, directed two thousand Crowns to be convey'd to the Queen's Enemies in *Scotland*.

Duke.

Duke. I do not deny the conveying of the Money, but it never came to the Queen's Enemies Hands.

Then was read the Letter to Bannister: You shall receive in a Bag by this Bearer, &c.

Wilbra. You know the Money went to the Lord Harris.

Duke. May a Subject be the Queen's Enemy, and his Prince in Amity with her?

Catlin. In some Cases it may be so. If the Duke- Where Subjects dom of Britany should rebel against the French King, may be deemed Enemies, tho' and at the same time invade England, those Britons, their Prince be though the French King's Subjects, are the Queen's in Amity. Enemies; though the French King remains in Amity. And so in your Case.

Duke. Where was the Proclamation made?

Wilbra. The Proclamation was made in England, A Proclamation and here it is to be shew'd; but the War it self not necessary to declare them so. is a sufficient Proclamation.

Duke. I trust my Lords, the Peers, will have Consideration of me; who they be that accuse me, the Bishop of Rosse, and Strangers, and the rest over-reach'd in Treasons themselves.

The Lord-Steward ask'd if he had ought else to say.

The Duke said, I trust to God and my Truth.

Then the Prisoner was withdrawn.

Then the Lord-Steward made a Speech to the Lords, and will'd them to go together.

The Lords withdrew into a Place prepar'd for them in the Court of Chancery, for Consultation: The Lord-Steward still remaining in his Seat.

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After an Hour and a quarter, the Lords return'd, and took their Places: And the Lord-Steward demanded of them severally, beginning at the youngest, if the Prisoner were guilty of these Treasons, or not.

To which they all severally answer'd, Guilty.

The Duke is convicted.

Then the Lieutenant was commanded to bring the Prisoner to the Bar; (which he did :) And the Lord-

Lord-Steward demanded what he had to say, why he should not proceed to Judgment.

The Duke answer'd, the Lord's Will be done : God judge between me and my false Accusers.

Sentence pronounced.

The Lord-Steward pronounc'd the usual Sentence in High-Treason.

Then the Duke striking his Breast, said, This is the Judgment of a Traitor, and yet I shall die as true a Man to the Queen as any lives. I will not desire any of you to prefer a Petition for my Life : I will not desire to live : I only beseech you, my Lords, to be humble Suiters to the Queen's Majesty, that it will please her Majesty to be good to my poor Orphan Children, and to take Order for the Payment of my Debts, and have some Consideration of my poor Servants.

Then the Lieutenant was commanded to take away his Prisoner, which was done.

And after Proclamation made for all Persons to depart, &c. The Lord-Steward standing up broke his Rod ; and the People cry'd, *God save the QUEEN.*

HICKFORD'S Arraignment.

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ON the 9th of February 1571, Mr. Robert Hickford, Servant to the Duke of Norfolk, was arraign'd for High-Treason.

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He was charg'd with dealing in the Matter about Rodolph's Voyage ; and adhering to, and comforting the Queen's Enemies.

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He pleaded Guilty to the Indictment, and submitted himself to the Queen's Mercy : Whereupon the Queen's Serjeant pray'd his Confession might be Recorded, and Judgment pass'd upon him according to Law ; which the Lord Chief-Justice pronounc'd accordingly.

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The

The Arraignment of WILLIAM PARRY,
Doctor of Laws, the 25th of February,
in the 26th of Queen Elizabeth, 1584.

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THE Indictment sets forth, "That the said
" William Parry, on the first Day of February,
" in the 26th Year of the Queen, at Westminster, in
" the County of Middlesex, and at divers other
" Times and Places in the same County, did traite-
" rously conspire the Death of the Queen's Majesty,
" and the Subversion of the Government and true
" Religion. And that whereas the said William
" Parry, by his Letters sent unto Gregory Bishop of
" Rome, signifying his Intentions aforesaid, and
" praying the said Bishop's Absolution: He, the
" said William Parry, afterwards, viz. the last Day
" of March, in the 26th Year aforesaid, did traite-
" rously receive Letters from one Cardinal de Commo,
" signifying that the said Bishop of Rome had pe-
" rus'd his Letters, and approv'd his Intentions;
" and therefore had absolv'd him of all his Sins,
" and did animate and stir him up to proceed in his
" Enterprize: And that thereupon the said William
" Parry, the last Day of August, in the 26th Year
" aforesaid, at St. Giles's in the Fields, in the same
" County of Middlesex, did traiterously confer with
" one Edmond Nevil, acquainting him with his said
" traiterous Devices, and then and there did move
" him to assist him therein, against the Queen's
" Peace, &c.

Parry indicted
for conspiring to
kill the Queen.

To which Indictment he pleaded Guilty, and his
Confession was recorded; and Parry's Confession
before the Lord Hunsdon, and others, was read,
wherein he acknowledg'd all that he was charg'd
with in the Indictment; and says, that he look'd
upon the Resolution he had taken of killing the
Queen to be lawful, and even meritorious.

He confess'd the
Indictment.
Page 104.

He look'd upon
the Action as
meritorious.

Then the Letter, mention'd in the Indictment,
from Cardinal Commo to Parry, was read. After-
wards the Lord Chief Justice, in a short Speech,
set

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Page 110.

set forth the many aggravating Circumstances this Crime was attended with; and particularly took notice, that the Prisoner had been one of her Majesty's sworn Servants; and that she had formerly given him his Life. Then he pronounc'd the Sentence, as usual in Cases of High-Treason.

*Babington and
Seven others
arraign'd.*

The Arraignment of ANTHONY BABINGTON, CHIDIOCK TITCHBURNE, THOMAS SALISBURY, ROBERT BARNNELL, JOHN SAVAGE, HENRY DONN, *and* JOHN BALLARD, the 13th and 14th of September, 28 Eliz. 1586.

And first John Savage was Arraign'd.

*Savage indicted
for conspiring
to kill the
Queen.*

THE Indictment set forth, " That the said John Savage did traiterously conspire to murder the Queen's Majesty, viz. on the first Day of April, 1586, at St. Giles's in the Fields, in the County of Middlesex. And that he contriv'd with the said John Ballard, how to put his malicious Designs in execution. And that afterwards, viz. the last Day of May, he did receive Letters from one Morgan, William Gifford, and Gilbert Gifford, whereby they did persuade and provoke the said Savage to execute his said Purpose, contrary to the Duty of his Allegiance, the Queen's Peace, &c.

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All of them
again indicted
for conspiring
to deliver the
Queen of Scots.

And for promising Aid to foreign Enemies.

Page 114.
They all confess'd the Indictment.

The 14th of September, they were all arraign'd together, upon another Indictment; where, besides the Crimes contain'd in the Indictment above, they were charg'd with attempting the Delivery of Mary Queen of Scots, from the Custody wherein she was. And for procuring and promising Aid to foreign Enemies, who shou'd invade the Realm; and of stirring up Rebellion and Sedition.

To this Indictment they all pleaded Guilty; and most of them affirm'd that it was by Ballard's Persuasions they were induc'd to believe, That it was lawful to murder the Queen, she being Excommunicated. Afterwards they were severally ask'd, What

What they cou'd say why Sentence shou'd not be pronounc'd against them; and Sentence was pass'd upon them, as usual in Cases of High-Treason.

The Tryal of EDWARD ABINGTON,
CHARLES TILNEY, EDWARD JONES,
JOHN TRAVERS, JOHN CHARNOCK,
JEROME BELLAMY, and ROBERT
GAGE, *the 15th of September, 28 Eliz.*
1586.

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THE Five first were indicted for conspiring the Death and Destruction of the Queen's Majesty, and the Subversion of the Government and Religion establish'd; and for procuring and stirring up her Majesty's Enemies to invade the Realm. And for contriving Ways and Means to deliver Mary Queen of Scots out of Custody.

Five others Indicted for conspiring the Queen's Death.

And the Indictment farther set forth, that the said Jerome Bellamy and Robert Gage, knowing that Anthony Babington, Robert Barnwell, and Henry Donn, had committed High-Treason, at Harrow in the Hill, in the County of Middlesex, did receive, aid and comfort them, contrary to their Allegiance, &c.

Bellamy and Gage charg'd in the same Indictment for harbouring Traitors.

To which Indictment they all severally pleaded Not guilty.

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Court. Take away Gage and Bellamy out of the hearing of the Court.

Abington. I beseech your Honours, I may have a pair of Writing-Tables, to set down what is laid against me, that I may yield a sufficient Answer.

Abington try'd.

Court. It was never the Course here; but when you hear any thing you are desirous to answer, you shall speak and answer at full, which is better.

Denied to take Minutes.

Puckering open'd the Matter: And then Babington's Confession was read; wherein he says,

Babington's Confession read against him.

That Edward Abington first mov'd to surprize the Queen, and carry her to some strong Place, and there to move her for Reformation or Toleration in Religion.

The *TRIAL* of

gion. And further, That *Abington* and *Tilney* were dispos'd to kill the Queen. *Babington's* Confession before the Lords was also read; Wherein he says, That when certain Seminaries in *Rome* came to take Leave of the Pope, and to kiss his Foot, the Pope ask'd what they were, and it was told him, that they were *Englishmen*, who went to spend their Lives for Reformation of Religion in their Country: Whereupon the Pope said, it was a good slow Way: But said, That he wou'd make a Bridge over that Ditch into *England* e'er it were long.

Ballard's Confession was also read, wherein he says, That *Babington* had appointed Six to kill the Queen, viz. *Abington*, *Titchburne*, *Tilney*, and Three others.

Then *Babington's* Letter to the Queen of *Scots* was read, wherein is this Clause: *There be six noble Gentlemen, which have undertaken the tragical Execution (meaning the Murder of the Queen of England) only it resteth that their Attempt be honourably rewarded. All the Actors have vow'd either to die, or perform their Purpose.*

Abington. It is very well, if I be at *Babington's* Command: But I protest, before Heaven and Earth, I never knew thereof: This is *Babington's* Brag to get Credit with the Queen of *Scots*.

Then the Examination of *Foster* the Armourer was read, whereby it was prov'd that *Abington* had provided Armour for himself and his Brother.

Attor. Gen. *Abington* set down the Truth of these Things in Writing, at the Desire of Mr. Vice Chamberlain; and yesterday he tore the Paper in a hundred Pieces, which Mr. Lieutenant of the Tower hath given me.

Abington's Defence.

Abington. As to my Acquaintance with *Ballard*, true it is he came to my Chambers, and I knew him not: Then he said he had seen me four Years ago at *Chertsey*. And when I ask'd what News, he told me of an Invasion intended against this Country, whereunto I gave such cold Answers, and such cold Enter-

Entertainment, that I never saw him since. For my Doings with *Babington*, his Lodging was in my way from *Charing-Cross*, through the Fields to *London*: And true it is he made me privy to his Treasons, and I conceal'd them: But when he told me Strangers wou'd invade this Realm, to reform Religion, I protested to *Babington*, I had rather be drawn to *Tyburn* by the Heels for my Religion, than to have it reform'd by Strangers. And to you, my Lords the Judges, I now speak, There is a Statute in the first of this Queen, That who shall conspire, &c. it shall be Treason, provided that he have two lawful Witnesses to avow it Face to Face: Now, as to *Babington*, he is a condemn'd Man, *Savage* and *Ballard* also are condemn'd Men; nor is it prov'd by them that I wou'd be one to kill the Queen, but that *Babington* had appointed me to be one, and it is not prov'd that I knew thereof.

Objects to the Witnesses, that they were condemn'd Men, and not brought Face to Face.

Court. True it is, had you been indicted upon the Statute of the 1st and 13th of this Queen, two Witnesses ought to have been produc'd; but you stand indicted by the Common Law, and upon the Statute of 25 *Eliz.* 3. and by that Statute no such Proof is requir'd.

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Answer'd by the Court, that the Evidence was sufficient.

Abington. As for my providing Armour, it was in order to go over with the Earl of *Leicester*.

Court. You had a seminary Priest in your House.

Abington. He was with me, but not in my House.

Court. Before *Babington* was taken, *Ballard* did voluntarily declare, that you two, *Abington* and *Tilney*, were dispos'd to kill the Queen. The Jury have heard the Charge, and your Answers, let them consider thereof.

TILNEY's Tryal.

His Confession was read, wherein he deny'd *Tilney's Tryal*.
Ballard's Acquaintance.

Then *Ballard's* Confession was read, importing, that before *Christmas* last *Ballard* did confess *Gage* and *Tilney* in a House in *Holbourn*.

Tilney. I deny'd *Ballard's* Acquaintance because he was a Traitor, and not for my Guilt, and for that I was confess'd by him ; it was no otherwise than all the Subjects of *England* were confess'd in the Days of King *Henry VII* : Besides, this only concerneth my Religion, which I was promis'd I shou'd not be charg'd withal.

Attor. Gen. This is only an Introduction to the Treason.

Then *Tilney's* own Confession was read, wherein he confess'd,

That *Abington* said, why might not her Majesty be as well surpriz'd as the Queen of Scots ? which Words he spake at the *Three-Tuns* in *Newgate-Market*. He also confess'd that *Ballard* came to his Chamber, and told him of an Invasion intended ; and promis'd him a Pension.

Hearing Treason
no Treason.
Page 120.

Tilney. These Things I confess ; but 'tis no Treason to hear Treason talk'd by others. As for *Ballard's* coming to me, he came openly in the Day-time undisguis'd.

Solicit. Gen. He being a Popish Priest, came in a Grey Cloak laid on with Gold Lace, in Velvet Hose, a Cut Sattin Doublet, a fair Hat of the newest Fashion, the Band being set with Silver Buttons, a Man and a Boy after him ; his Name Captain *Fortescue*.

Then *Ballard's* Confession was read, wherein he says,

He thinks *Tilney* did assent to kill the Queen ; for he saw him not dissent when he told him these Treasons. Also that *Tilney* requested of him some Pension in *France* when he came over.

Tilney. I stand upon the Assent.

Puckering. *Babington* said yesterday at the Bar, That *Tilney* wou'd have her Majesty set upon in her Coach.

Tilney. No, I said not so ; only at the *Three-Tuns* in *Newgate-Market*, I said it might be her Majesty might be set upon in her Coach ; but that proves not I did consent.

Attor. Gen. You have said enough, if we had no other Evidence against you.

Tilney. How so? If a Servant who is faithful, knowing where his Master's Money is, does say, If I wou'd be a Thief, I cou'd rob my Master, for in such a Place is his Money: This proves not that he wou'd rob his Master. So, tho' I said she might be set upon in her Coach, it proves not that I assented to it. *Tilney's Defence.*

Court. But if a Servant, knowing where his Master's Money is, among Thieves does say, This way my Master's Money may be taken, and be in view when it is taken, he is accessary. And you being among Traitors, who were devising how to kill her Majesty, to shew by what means her Majesty might be slain, it manifestly proveth your Assent: Therefore let the Jury consider of their Evidence. What shall be constru'd an Assent to Treason.

JONES Tried.

He confess'd he had assisted *Salisbury* to make his Escape, knowing of his Treason, and threw himself on her Majesty's Mercy. He said his Case was hard, he must either betray his dearest Friend, or break his Allegiance to his Sovereign, and undo himself and his Posterity for ever. *Jones try'd.*

TRAVERS Tried.

Salisbury's Confession was read, wherein he says, That when he acquainted *Jones* and *Travers* with his Treasons, they protested they wou'd not discover him. And *Caley's* Confession was read, importing, That *Travers* and *Salisbury* fled, and that they chang'd their Names. *Travers try'd.*

Travers. I fled and chang'd my Name because I was a Catholick, and doubted to be troubled for my Religion and Conscience. Page 121.

Solicit. Gen. You fled for Treason; and when *Jones* told you *Salisbury* had undone you all; you said,

said, What Remedy? and it was time to be packing: And you had your Chaplain *Culey* with you.

Travers. If he be a Priest, I honour him for his Priesthood. He said little else, and seem'd not to care what Evidence came against him, but was resolv'd to die.

CHARNOCK *Tried.*

Charnock try'd.

He confess'd that *Ballard* made him acquainted with the intended Invasion, and other Treasons.

Then the Confessions of *Babington*, *Savage* and *Ballard* were read against him, importing,

That he was to have been one of the Six who were to have kill'd the Queen. And *Babington*, in particular, at his Examination, confess'd, That as he was talking in *Paul's* with *Charnock* of the Queen's Death, *Charnock* promis'd him to be dispos'd of by him in this Action. And that he offer'd to spend his Life, wherein *Babington* should direct him.

Then was read *Charnock's* own Confession;

That he had lent Apparel to *Savage* to fly in: And that he fled into the Woods himself.

Charnock. For flying away with my Friend, I fulfill'd the Part of a Friend therein.

Assisting a
Traitor's Escape
Treason.

Court. To perform thy Friendship, thou didst break thy Allegiance to thy Sovereign. You of the Jury have now heard their several Answers; go together and consider thereof.

Then *BELLAMY* and *GAGE*
were call'd.

Ballard and
Gage try'd for
harbouring of
Traitors.

The Evidence against *Gage* was; That he knew *Ballard* to be a Priest; and that he was reconcil'd to the Church of *Rome* by *Ballard*; That he lodg'd *Ballard*, and attended him into the *North* as his Man; That he lent *Savage* a Horse to fly, and lent *Babington* Apparel. And being ask'd by my Lord Chief
Baron

Baron *Manwood*, why he fled; he said, for Company.

Bellamy confess'd, That it was rumour'd in the Country, that *Babington*, *Barnwell*, and *Donn*, had conspir'd the Queen's Death: And that, notwithstanding, he brought them Meat into the Woods, and lodg'd them at his House. Also one of the Evidence depos'd, That coming to *Bellamy's* House to seek for Traitors, he denied he knew where they were, tho' at the same time he had them in his House. He said little for himself.

Then this Jury went out, and the first Jury return'd; and Alderman *Martin*, their Foreman, said they had found all the Five Prisoners guilty.

Soon after the other Jury return'd, and brought in also *Gage* and *Bellamy* guilty of the Treasons they were indicted off.

After the Prisoners had been severally ask'd, What they cou'd say why Judgment shou'd not be given against them, the Sentence was pronounc'd.

Page 122.

Proceedings against MARY Queen of Scots, at Fotheringay Castle, the 12th of October, the 28th of Eliz. 1586, for being concern'd in a Conspiracy against Queen Elizabeth.

THE Life of Queen *Elizabeth* having been often attempted by the Papists, in prospect of a popish Suceffor: The Nation voluntarily enter'd into an Association for the Queen's Safety, obliging themselves to revenge her Death on those who shou'd be the Authors of it. This Association, although enter'd into voluntarily by Persons in their private Capacities, was confirm'd by an Act of Parliament, made the 27th of *Eliz.* 1585. Entitled, *An Act for the Security of the Queen's Royal Person, and the Continuance of the Realm in Peace.* And it was also thereby enacted, That if any Invasion or Rebellion shou'd be made, within any of her Majesty's Dominions; or any Act attempted, tending

The Introduction.

The Association.

Page 123.

An Act to confirm it.

Page 124.

to the hurt of her Majesty's most Royal Person, by or for any Person that shou'd or might pretend Title to the Crown after her Majesty's Decease: Or if any thing shou'd be compass'd or imagin'd, tending to the hurt of her Majesty's Person, with the Privy of any Person that should or might pretend Title to the Crown; That then, by her Majesty's Commission under the great Seal, the Lords, and others of her Majesty's Council, and such other Lords of Parliament as shou'd be named by her Majesty, amounting to the Number of Twenty-four, at the least, shou'd, by virtue of this Act, be authoriz'd to examine all and every the Offences aforesaid; and to give Sentence, as upon good Proof the Matter should appear unto them, &c.

Page 125.

A Commission
for trying the
Queen of Scots.

The following Year, *Babington* and others, being convicted of a Conspiracy to assassinate Queen *Elizabeth*; and the Queen of Scots charg'd with being privy to and countenancing and encouraging that Conspiracy: A Commission was issued out, founded upon the abovesaid Statute, for the Examination and Tryal of the said Queen of Scots.

Page 126.

The Commis-
sioners meet.

Sh^e objects to
their Authori-
ty.

On the 11th of *October*, the greatest part of the Commissioners arriv'd at *Fotheringay*, in *Northamptonshire*. The next Day the Commissioners sent Sir *Walter Mildmay*, &c. to the Queen of Scots, who deliver'd her a Letter from Queen *Elizabeth*. When she had read it, she said, she foresaw when the Association was enter'd into, and the Act of Parliament thereupon made; That whatever Danger shou'd happen, either from foreign Princes abroad, or from ill dispos'd People at home, or for Religion's sake, she must bear the whole Blame, having many mortal Enemies in the Court. That as to the Letter, it seem'd strange to her, that the Queen shou'd command her, as a Subject, to appear personally in Judgment. That she was an absolute Queen, and wou'd do nothing which might prejudice either her own Royal Majesty, or other Sovereign Princes, or her Son. That she had excited no Man against the Queen. That she was not to be charg'd, but by her own Word or Writing, which cou'd not be produc'd against her: Yet

Yet she cou'd not deny but she had commended herself and her Cause to foreign Princes.

The next Day, her Answer being reduc'd to Writing, there came another Deputation from the Commissioners, and the Answer being read to her, 'twas demanded if she persisted in it: She said, she wou'd persist in it, but desir'd it might be added; That whereas the Queen had written, that she was subject to the Laws of *England*, and to be judg'd by them, because she liv'd under the Protection of them: She answer'd, That she came into *England* to crave Aid, and ever since hath been detain'd in Prison; and cou'd not be said to have enjoy'd the Benefit or Protection of the Law of *England*.

She demanded by what Authority they proceeded against her. It was answer'd, By Authority of their Commission, and by the Common Law of *England*.

Page 127.

She reply'd, That the Authority of their Delegation was founded upon a late Law made to entrap her. That she wou'd not offend against her Progenitors, Kings of *Scots*, by acknowledging herself a Subject of the Crown of *England*. Yet she refus'd not to answer, so as she might not be reduc'd to the Rank of a Subject: But she had rather perish than answer as a Criminal Person.

Her Protestation.

On the 14th she sent for some of the Commissioners, and pray'd them that her Protestation might be admitted and allow'd. The Lord Treasurer ask'd, if she wou'd appear at her Tryal, if her Protestation were only receiv'd and put in Writing, without Allowance; she yielded, at length, but with an ill Will, lest she shou'd seem, as she said, to derogate from her Predecessors or Successors.

It is receiv'd, and she submits to appear.

Soon after the Commissioners assembled themselves in the Presence Chamber; and when the Queen of *Scots* was come, and had seated herself in a Chair provided for that Purpose, Bromley, Lord Chancellor, turning to her, spake to this Effect.

Page 128.

"The most High and Mighty Queen *Elizabeth*, Lord Chancellor's Speech.
"being, not without great Grief of Mind, advertis'd,

“ tis’d, That you have conspir’d the Destruction of
 “ her, and of *England*, and the Subversion of Reli-
 “ gion: Hath, out of her Office and Duty, left
 “ she might seem to have neglected God, herself,
 “ and her People; and out of no Malice at all, ap-
 “ pointed these Commissioners to hear the Matters
 “ that shall be objected unto you, and how you can
 “ clear yourself of them, and make known your In-
 “ nocency.

The Queen of *Scots* rising up, repeated her former Protestation; but added, That she now appear’d Personally, to refute the Crimes objected against her. And of this she desir’d her own Attendants to bear Witness.

Her Protestation recorded.

The Lord Chancellor answer’d, That this Protestation was vain; for that whosoever (of what Place and Degree soever he were) should offend against the Laws of *England*, in *England*, was subject to the same Laws; and therefore, that the said Protestation, made in prejudice of the Laws and Queen of *England*, was not to be admitted. The Commissioners, nevertheless, commanded, that as well her Protestation, as the Lord Chancellor’s Answer, should be recorded.

Then *Gawdy* open’d the Matter, and shew’d how she had offended against the late Statute. That she knew of *Babington’s* Conspiracy, approv’d of it, and promis’d her Assistance.

She answer’d, That she knew not *Babington*, nor ever wrote to him, or receiv’d any Letters from him, That she never plotted the Destruction of the Queen: And that to prove any such Thing, her own Hand ought to be produc’d. That she knew not *Ballard*, or ever relieved him. That many Letters had been sent to offer her Aid and Assistance, by People unknown to her; yet she had excited no Man to commit any Offence; and being shut up in Prison, she cou’d neither know nor hinder what they attempted.

Babington’s Confession and Letters produc’d against her.

The Copies of *Babington’s* Letters to her were read, wherein the whole Conspiracy was set down. And to prove that she receiv’d *Babington’s* Letters, there was read, out of *Babington’s* Confession, the
 Heads

Heads of some Letters which he confess'd she wrote back to him.

She answer'd, *Babington* might confess what he pleas'd; but it was an open Lie, that she had devis'd such Means to escape. That her Adversaries might easily get her Cyphers, and write many Things falsely.

Then there was a Letter produc'd, wherein *Babington's* Plot was commended and approv'd: She requir'd a Copy of it, and affirm'd it came not from her; she said she had done her best Endeavour to recover her Liberty, which Nature itself alloweth, and had solicited her Friends to deliver her; but that she wou'd not purchase the Kingdom with the Death of the meanest Man in it, much less of the Queen. That it was an easy Matter to counterfeit the Cyphers and Characters of others, as a young Man did very lately in *France*, which had vaunted himself to be her Son's base Brother. That she fear'd also this was now done by *Walsingham*, to bring her to her Death, who (as she heard) had practis'd against her Life and her Son's. She protested she had not so much as thought of the Destruction of the Queen, but would gladly lay down her own Life, rather than for her sake the Catholics should be so afflicted and drawn to cruel Deaths.

Page 129.

The Treasurer affirm'd no Man had been executed purely for Religion, but for Treason.

Walsingham protested solemnly he was free from all Malice against her, and had acted but as the Duty of his Place requir'd him. With this Answer she seem'd satisfied, and pray'd him he wou'd not be angry she had spoken so freely what she had heard reported. Then the Court adjourn'd.

In the Afternoon was produc'd the Copy of a Letter, which *Charles Pagett* had written, and *Curle*, one of her Secretaries, had witness'd she had receiv'd, touching a Conference between *Mendoza* and *Ballard*, about the Design of invading *England*, and setting her at Liberty. But this, she said, did not prove that she had consented to the Destruction of the Queen.

Then

Charg'd with a
Design of con-
veying *England*
to the *Spaniard*.

Then was urg'd against her, a Plot, that was laid for conveying the Kingdom of *England* to the *Spaniard*. And she confess'd a Priest came to her, and said, that if she wou'd not intermeddle, she and her Son both shou'd be excluded. And she added, that the *Spaniards* did lay claim to the Kingdom of *England*, and wou'd not give place to any but her.

The Testimony
of her Secreta-
ries produc'd
against her.

Then she was press'd with the Testimonies of her Secretaries, *Naw* and *Curle*, out of *Babington's* Confession, and the Letters sent to and fro between her and *Babington*, and the whole Credit of the Proofs rested upon their Testimony: Yet were they not produc'd before her Face. She answer'd, they might insert in her Letters such things as she never dictated to them; and that Letters might come to them which she never saw. She said, she had delivered nothing to them, but what Nature delivered to her that she might recover her Liberty: That if they had written any thing hurtful to the Queen, her Sister, it was without her Knowledge, and they ought to bear the Punishment: But that if they were present, they wou'd clear her of all Blame in this Cause; and that if she had her Notes, which had been taken from her, she could answer particularly to these Things. Being charg'd with allowing *Morgan* a Pension, who sent over *Parry* to kill the Queen: She answer'd, she did it upon account of *Morgan's* Services, who had lost all for her sake, but that she always deter'd him from such Attempts. And that Pensions had been allow'd to her Enemies in *Scotland* by the Queen of *England*.

Complains her
Papers were
taken from her.
Page 130.

The next Day she renew'd her former Protestation, and requir'd a Copy of it. She lamented that the most reasonable Conditions she cou'd propose to the Queen, had been always rejected; even when she promised to deliver her own Son, and the Duke of *Guise's* Son for Hostages, that the Nation or the Queen might receive no Detriment by her. She complained that her Honour and Reputation were call'd in question before foreign Lawyers, who, by wretched Conclusions, drew every Circumstance into a Consequence: And that Princes anointed and con-

consecrate, are not subject to the same Laws that private Men are.

To this the Lord Treasurer answer'd, That her Protestation shou'd be recorded, and a Copy deliver'd her. That the Commissioners had full Power to examine this Matter, even in her Absence, and from them there lay no Appeal; That nothing had been objected to her, but what she was privy to, or had attempted against the Queen's Person. That the entire Letters had been read, and not Parcels pick'd out here and there: And the Circumstances did confirm what Matters she dealt with *Babington* about. That she, or the *Scots*, were the Occasion that all she had propos'd, fail'd of Success, and not the Queen; for the Lords of *Scotland* flatly refus'd to deliver her Son in Hostage. And that when the last Treaty was holden, concerning her Liberty; *Parry* was sent privately by *Morgan*, a Dependant of hers, to murder the Queen.

Page 131.

Then werè read her Letters to *Charles Pagett*; Her Letters to wherein she shew'd him, That there was no other *Pagett*. way for the *Spaniard* to reduce the *Netherlands* to obedience, but by setting up a Prince in *England* that might be of use to him; and to entreat the Lord *Pagett* to hasten his Auxiliary Forces to invade *England*. And Cardinal *Allen*'s Letter was read, wherein he call'd her his most dread Sovereign Lady; and signified that the Matter was commended to the Prince of *Parma*'s Care.

To this she answer'd, That as for *Allen*, she held him for a Reverend Prelate; and she acknowledg'd no other Head of the Church but the Bishop of *Rome*. In what Rank and Place she was esteem'd by him, and foreign Princes, she knew not; nor cou'd she hinder it, if in their Letters they stil'd her Queen of *England*. As for her Secretaries, since they had acted contrary to their Duty and Allegiance, sworn to her, they deserv'd no Credit. That *Naw* had often written otherwise than she had dictated to him; and *Curle* wrote whatsoever *Naw* bad him. And that possibly they said these things to save themselves, supposing they cou'd not hurt her

her by it, who they thought wou'd be more favourably dealt with, being a Queen.

Acknowledges
her Design of
conveying *Eng-
land* to the *Spa-
niard*.

Then she was press'd with the Design of conveying her Right in the Kingdom to the *Spaniard*, which she did not deny, but said, That now all her Hopes in *England* being desperate, she was fully resolv'd not to reject foreign Aid.

Lord Treasurer
affirm'd the
Kingdom cou'd
not be convey'd,
but must descend
to the Successor.

The Solicitor put the Commissioners in mind, what wou'd become of them, their Honours, Estates, and Posterities, if the Kingdom were so convey'd. But the Lord Treasurer shew'd that the Kingdom of *England* cou'd not be convey'd, but was to descend by Right of Succession, according to the Laws.

She requir'd that she might be heard in a full Parliament, or might speak with the Queen in Person, who she hop'd wou'd have regard for a Queen.

Then the Court adjourn'd to the 25th of *October* at the *Star-Chamber* in *Westminster*. When the Commissioners pronounc'd their Judgment, viz.

Sentence pro-
nounc'd.

" That after the 1st Day of *June*, in the 27th
" Year of the Queen, and before the Date of their
" Commission, divers Matters had been compass'd
" and imagin'd, by *Anthony Babington, cum Scientia*,
" i. e. with the Privy of the said *Mary*, preten-
" ding Title to the Crown of this Realm, ten-
" ding to the Hurt, Death and Destruction of the
" Royal Person of the Queen. And that the said
" *Mary*, pretending Title to the Crown of *England*,
" had also herself, within the time aforesaid, com-
" pass'd and imagin'd divers Matters, tending to
" the Hurt, Death and Destruction of the Royal
" Person of our Sovereign Lady the Queen, con-
" trary to the Form of the aforesaid Statute of the
" 27th of the Queen.

The Sentence
variously cen-
sur'd.

This Sentence, which depended wholly upon the Credit of the Secretaries, and they not brought forth Face to Face, according to the 13th of *Eliz.* was variously censur'd. *Cambden* says he had seen *Naw's* Apology to King *James*, written in the Year 1605, wherein he stoutly impugned the chief Points of

of Accusation against his Lady and Mistrefs: But it does not appear so by the Records.

Page 132.

The same Day the Sentence was pronounc'd, a Declaration was made by the Commissioners and Judges, that the said Sentence did derogate nothing from *James* King of *Scots*, in Title or Honour; but that he was in the same Place, Degree and Right, as if the same Sentence had never been pronounc'd.

King *James's* Title not prejudic'd.

Both Houses of Parliament having approv'd and confirm'd the Sentence given against the Queen of *Scots*, jointly address'd the Queen to this effect,

The Sentence confirm'd by Parliament.

That her Majesty, as well in respect of the Continuance of the true Religion, and the Safety of her Royal Person, as in regard of the Preservation and Defence of her faithful Subjects, and the Commonwealth of this Realm; wou'd be pleas'd to give speedy Order, That a Declaration of the same Sentence and Judgment might be made, and publish'd by Proclamation. And that Directions might be given for further Proceedings against the *Scotish* Queen, according to the abovesaid Statute: Because that upon advis'd and great Consultation, they cou'd not find that there was any possible means of providing for her Majesty's Safety, but by the just and speedy Execution of the said Queen. And that if the said Sentence were not speedily executed, they despair'd of the Continuance of the true Religion, of her Majesty's Life, and the Safety of all her faithful Subjects.

Page 133.
The Queen address'd to put the Sentence in execution.

To this Address the Queen answer'd;

That if her Life alone depended upon it, and not the Safety and Welfare of her People, she wou'd most willingly pardon her. Nay, if *England* might by her Death attain a more flourishing Estate, and a better Prince, she wou'd most gladly lay down her Life, for it was only for her People's sake she desir'd to live. She said, that by the last Act of Parliament they had brought her to a great Strait, that she must give order for her Death, who was a Princess most nearly allied unto her in Blood, and whose Practices against her had stricken her into so great Grief, that she had been glad to absent herself

Her Answer.

Page 134.

self from this Parliament, lest she shou'd encrease her Sorrow, by hearing it spoken of, and not out of fear of Danger, as some thought, tho' it was not long since she had seen and read an Oath, wherein some had bound themselves to kill her within a Month. However, she hop'd they did not expect any present Resolution, for in Matters of less Moment she used to deliberate long; but that she wou'd signify her Pleasure in convenient time. And whatever the best Subjects might expect at the Hands of the best Princess, they might expect from her.

Twelve Days afterwards she sent to both Houses, that they wou'd devise some means that the Queen of Scots Life might be spar'd. But they again represented to her, That her Safety could not possibly be secur'd so long as the Queen of Scots liv'd; and therefore renew'd their Instances for her speedy Execution.

Page 135.
The Sentence
proclaim'd.

The Publication of the Sentence was, notwithstanding, defer'd a while, at the Intercession of the French Embassador. But in the Month of December, at the Instance of some Courtiers, it was publickly proclaim'd all over the City of London, by the Lord Mayor, &c. and afterwards throughout the whole Kingdom. And the Lord Buckhurst and Beal were sent to the Queen of Scots, to signify that Sentence had been pronounc'd against her, and confirm'd by Act of Parliament; and to persuade her to acknowledge her Offences, and expiate them before her Death by Repentance: Letting her understand also, That as long as she liv'd, the receiv'd Religion in England cou'd not subsist. At this she triumph'd, giving God Thanks, that she was esteem'd an Instrument for re-establishing Religion in this Island.

Queen

Queen Elizabeth's Letter to Sir Amias Pawlet,
Keeper of the Queen of Scots, at the Castle of
Fotheringay.

Page 139.

" *A* *Mias*, my most faithful Servant, God reward
" thee treble-fold, in the double of thy
" most troublesome Charge, so well discharg'd.
" If you knew, my *Amias*, how kindly, besides du-
" tifully, my grateful Heart accepts your double
" Labours, and faithful Actions, your wise Orders,
" and safe Regards, perform'd in so dangerous a
" Charge, it wou'd ease your Travel, and rejoice
" your Heart, in that I cannot ballance, in any
" weight of my Judgment, the Value that I prize
" you at, and suppose no Treasure to countervail
" such Faith; and shall condemn myself in that
" Thought I never committed, if I reward not
" such Deserts: Yea, let me lack when I most
" need, if I acknowledge not such a Merit with a
" Reward not *omnibus datum*: But let your wicked
" Murtherefs know, how, with hearty Sorrow, her
" vile Deserts compel these Orders: And bid her,
" from me, ask God Forgiveness for her treache-
" rous Dealing against my Life many Years, to
" the intolerable Peril of her own; and yet not
" content with so many Forgivenesses, but must
" fall again so horribly, far passing a Woman's
" Thought, much less a Prince's.

The Queen's
Letter to Sir
Amias Pawlet.

Elizabetha Regina.

On the 1st of February the 29th of *Eliz.* the
Queen sign'd a Commission, directed to the Earls of
Shrewsbury, Kent, and others, for the Execution of
the Queen of Scots.

Warrant for her
Execution.

Page 140.

The Tryal of PHILIP HOWARD, Earl of Arundel, the 18th of April, 31 Eliz. 1589. Before the Earl of Derby, Lord High-Steward; Burleigh, Lord-Treasurer, and twenty two other Lords.

Page 141.

AT my Lord *Arundel's* coming to the Bar, he made two Obeisances to the State, and the Lords there present.

Sands, Clerk of the Crown. Philip Howard, Earl of *Arundel*, hold up thy Hand.

Then he held up his Hand very high, saying, Here is as true a Man's Heart and Hand as ever came into this Hall.

Substance of the Indictment.

Then *Sands* read the Indictment, which set forth;
 “ That whereas Doctor *Allen*, and divers others
 “ natural born *Englishmen*, had conspir'd several dan-
 “ gerous Treasons against her Majesty: The said
 “ Earl having Conference with *Bridges*, and divers
 “ others Traitors, and Popish Priests, had by them,
 “ since the 20th Year of her Majesty's Reign, dis-
 “ patch'd several Letters to the said Doctor *Allen*,
 “ to promote the Catholick Cause. And that on
 “ the 24th of *April*, in the 27th Year of the Queen,
 “ the said Earl was flying beyond Sea to the said
 “ Arch-Traitor Dr. *Allen*: And that thereupon the
 “ said *Allen* solicited the Bishop of *Rome*, and the
 “ K. of *Spain*, to raise War against this Realm. And
 “ that on the 21st of *July* in the thirtieth Year of
 “ the Queen, at the Tower, the said Earl did imagine
 “ that the Queen was an Heretick, and not fit to
 “ govern the Realm; and did procure one *Eennet*,
 “ a Seminary Priest, to say Mass, for the Success of
 “ the *Spanish* Fleet; and that he did assist at the
 “ same Mass, contrary to the Duty of his Alle-
 “ giance, &c.

The Evidence.

To prove that part of the Indictment relating to his praying for the Success of the *Spanish* Fleet, the Examinations of Sir Thomas Gerard, Mr. Shelley and Bennet

Bennet the Priest, who were Prisoners with him in the Tower, were read: And they were afterwards severally brought into Court, and gave their Evidence *viva voce*.

One *Walton*, and *Church*, were called into Court also, who deposed, That Letters were brought from *England* to *Reims*, where they both were, by one *Hill*, one of my Lord's Faction; That the Earl of *Arundel* should be General of the Catholicks, when the Tower should be surprized.

It was urged further by the Queen's Council, That my Lord had been reconcil'd to the Church of *Rome*, which by a late Statute was High-Treason: For Proof of this, a Letter was mention'd that had been sent from *Morgan* to the Queen of *Scots*, in Commendation of two Priests, wherein it was said, that one of them had reconciled the Earl of *Arundel*. That my Lord being examined in the Tower, concerning his sudden going to Sea, had answer'd, His Design was to serve the Prince of *Parma*, or do what Doctor *Allen* should direct him for the Catholick Cause: That he had also confess'd, that he was going away for fear a Statute should be made against Catholicks, in the 22d Year of the Queen: And that Doctor *Allen* advis'd him he should not come over if he could continue here in any Safety, because he might be better able to make a Party in *England* when they came: That *Allen* sent my Lord Word, if he did come over, he must take a greater Title than that of Earl, and there-upon address'd to him as Duke of *Norfolk*.

Page 142.
Further Charge
against him.

And it was further urg'd, That the Earl of *Arundel* was a Procurer of the last Bull against the Queen, and of the Invasion.

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The Earl of *Arundel* said he had been a close Prisoner four Years and twenty five Weeks, and that he had been sick and weak, and desir'd the Court they would have Patience to hear him to these Points. He said he was no Catholick in the 22d Year of the Queen. He acknowledged that *Bridges* did confess him, but not reconcile him: He observ'd, that several things objected to him were only alledg'd; whereas they ought to have been prov'd by two Witnesses. That as to his saying

His Defence.

he would be rul'd by *Allen* in all things, he added, except what did concern her Majesty and the State, and said that he would serve the Queen against all Princes, Pope, or Potentates whatsoever. As to the Witnesses produc'd, he said some of them were attainted, some of them indicted; others ill Men or Prisoners, and that their Testimony was not to be regarded; and submitted his Cause to the Consideration of the Peers, who then withdrew, and his Lordship was taken from the Bar.

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He is convicted.

Within an Hour after the Lords return'd, and Mr. *Sands*, Clerk of the Crown, ask'd them severally, beginning at my Lord *Norris*, who was the youngest, Whether the Prisoner were Guilty, Yea or No? And every one of them laying their Hands upon their Breasts, did protest in their Consciences, and upon their Honours, that he was Guilty.

Then the Lieutenant was called to bring his Prisoner to the Bar: And it being demanded what he had to say why Judgment should not be given against him, he entreated the Lords to be Mediators for him to her Majesty; that his Debts might be paid; that he might confer with his Officers, and be permitted to see his Wife, and his Infant, born after his Imprisonment; which he had never seen.

Sentence pass'd.

And then the usual Sentence was pronounc'd.

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The Tryal of Mr. JOHN UDAL, 31 Eliz. 1589.

Mr. Udal's Examination.

ON the 13th of January 1589, he was brought before a Committee of Council, appointed to examine him at my Lord *Cobham's* House in *Black-Friars*; where were present my Lord *Cobham*, my Lord *Buckhurst*, my Lord *Anderson*, the Bishop of *Rochester*, and Mr. *Fortescue*; Mr. *Egerton* the Queen's Solicitor, Dr. *Lewen*, and Dr. *Auberry* also attended there.

Ander. How long have you been at *Newcastle*? Why went you from *Kingston*?

Udal,

Udal. I was silenc'd at *Kingston*; and the People of *Newcastle* made means to my Lord *Huntingdon*, who sent me thither: I have been there about a Year.

Ander. You are call'd hither to Answer concerning certain Books which are thought to be of your making.

Udal. If it be for *Martin's* Books, I answer'd at *Lambeth* a Year and half ago, and clear'd my self not to be the Author, or to know who he was.

Dr. Auberry, Dr. Lewen. There was such a thing, as my Lord's Grace told us.

Ander. It is more than I heard; but you are to answer to other Books; What say you to those call'd, *A Demonstration*, or *A Dialogue*? Did not you make them?

Udal. I cannot answer thereto. Doth not the Law say, no Man shall be put to answer without Presentment before Justices, or Things of Record, or by due Process, or Writ Original, &c. 14 *Edw.* III. 5. Page 145.
Alledges that no Man is bound by Law to accuse himself.

Ander. That is true, if it concern'd your Life; but by Law you ought to answer in this Case.

Fortes. You are very cunning in the Law; pray, by what Law did you preach at *Newcastle*, being forbidden at *Kingston*?

Udal. I know no Law against it, seeing it was the Official *Dr. Hone*, who did silence me, whose Authority reacheth not out of his Arch-Deaconry.

Buckh. It is no standing with him thus: Wilt thou swear to answer such things as shall be demanded of thee, in the behalf of our Sovereign Lady the Queen? You have heretofore taken this Oath, why will you not take it now? Page 146.

Udal. Indeed, you call to Remembrance a good Reason to refuse it. I was call'd to answer to certain Articles upon Oath heretofore, and confess'd that against my self, concerning my Judgment and Preaching of the Points of Discipline, which could never have been prov'd. And when my Friends labour'd to have me restor'd to my Place, the Archbishop answer'd, that there was sufficient Matter against me by my own Confession, why I should not be restored. Whereupon I covenanted with

with mine own Heart, never to be mine own Tormentor in that sort again. The Apostle saith, Receive not an Accusation against an Elder under two or three Witnesses ; and Semanro, the Spanish Inquisitor, saith to the same purpose.

Buck. What, you are an Elder are you ?

Udal. My Lord, however the Word *Elder* be taken, whether so largely as I and my Brethren, that desire the Discipline, do take it ; or only for a Minister of the Word, as our Adversaries understand it, I am an Elder.

Buck. But you would have other Elders govern the Church ; which Desire of yours, when it cometh to pass, I will give over my Barony, and become an Elder.

Rocheft. If you refuse the Oath, you must go to Prison, and there remain till you are glad to take it.

Refuses to answer upon Oath.

Udal. God's Will be done : I had rather go to Prison with a good Conscience, than to be at Liberty with an ill one.

Then he was sent to the Gate-house, where he was kept close Prisoner half a Year, not being permitted Pen, Ink or Paper, or any Body to speak to him but his Wife, in the hearing of the Keeper : And complains in the abovesaid Relation he gives of this Process, that he was shut up with Seminary Priests and Traitors, till he was carried to his Tryal at Croyden.

The Indictment.

Mr. *Udal* was brought to his Tryal at the Assizes at Croydon, the 24th of July 1590.

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He was indicted for feloniously Writing and Publishing a seditious and scandalous Libel, to the Defamation of her Majesty's Government, and stirring up Sedition and Rebellion.

He is deny'd Council.

After the Indictment was read he desir'd to be heard by his Council ; which being deny'd, he pleaded not Guilty. Then the Jury were call'd.

Udal. Pray, my Lord, how many am I by Law permitted to challenge ?

The Court refuse to advise him as to his Challenges.

Judge. I am not to tell you that : I sit to judge, and not to give you Counsel.

Then he desired he might have leave to answer one Point before they proceeded to another ; and that

that he might be heard without Interruption: Both which the Court granted.

Mr. *Daulton*, the Queen's Council, before he open'd the Indictment, made a short Preface, wherein he charg'd the Prisoner with Blasphemy; and that he, and those of his Sect, would assume an Authority, even over her Majesty. To which *Udal* reply'd, he should not trouble himself to answer Mr. *Daulton*, he having alledged nothing to make good the Charge in the Indictment; but said, it would have become Mr. *Daulton* to have been less severe, he having heretofore carried some Shew of liking to the Cause he now spoke against.

Judge. Sirrah, Sirrah, answer to the Matter that Mr. *Daulton* hath against you. Mr. *Daulton*, proceed to the Proof of the Points of the Indictment.

Then the Deposition of *Stephen Chatfield* was read, importing, That he saw certain Papers, tending to the Design of the Book, for which the Prisoner was indicted, in his Study at *Kingston*: And that as this Deponent was talking with Mr. *Udal* concerning his being silenc'd, Mr. *Udal* said, if they put him to Silence, he would give the Bishops such a Blow as they never had.

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Depositions
read against
him.

Udal. I was accus'd this time two Years upon the Words of *Chatfield*; that these Papers that he he did see in my Study should be the Matter of *Martin Mar Prelate*. And because I clear'd my self of that, it is now brought to prove another Matter; but it proves nothing, unless it were set down in particular what they were.

Daulton. It proves that you had a Purpose to write this Book: And those things were Collections from your Friends, and Preparations thereunto.

Udal. It may be prov'd, that this Book was extant before the Conference between *Chatfield* and me.

Then the Prisoner's Confession was read, importing, That if the Bishops put him to Silence, they would give him Occasion and Leisure to be employ'd in Writing against them.

The Prisoner's
Confession
read.

Then the Deposition of *Nicholas Thomkins* was read, who deposed, That Mr. *Udal* had told him he was the Author of the Book call'd, *The Demonstration* : Also, that he had seen a Catalogue of Mr. *Udal*'s Books, among which *the Demonstration* was one.

Whether the
Witnesses ought
not to give their
Evidence *viva*
voce.

Udal. This is no Evidence, unless he were produc'd Face to Face.

Judge. The Examination is attested under the Hands of Dr. *Auberry* and Dr. *Lewen*, and confirm'd by the latter before me on his Corporal Oath.

Udal. He told me the Day before I was committed, he could not say, neither would he for a thousand Pound affirm, any more than this, That he heard me say I would not doubt but set my Name to that Book, if I might have indifferent Judges ; and here are some Witnesses, that, upon their Oaths, will testify, how variously he has reported this Matter.

The Court re-
fuse to hear the
Prisoner's Wit-
nesses.

The Witnesses offering themselves to be heard, were answered, That because their Witness was against the Queen they could not be heard.

Udal. As to the Catalogue *Thomkins* saw of my Books, it is rather an Argument I made it not ; for Men use not to put their own Works in the Catalogue of those they have in their Study.

Daul. You of the Jury consider, that *Thomkins* was Mrs. *Crane*'s Man, and was privy to all the Printing that was at her House ; and Mr. *Udal* us'd to go often thither.

Udal. What if I us'd to go thither ? She is my Acquaintance : And why is not *Thomkins* here to attest this ?

Daul. He was sent away beyond Sea by Mr. *Gore*, who married Mrs. *Crane*'s Daughter, and the Deposition of a Person absent is sufficient.

Judge. We will offer you that Favour which never any indicted of Felony had before. If you will take your Oath you did not make the Book, it shall suffice.

Udal. I and many more do think the Book to be good, and written in Defence of a Cause which we take to be most true ; and therefore we agree neither to confess or deny it, that the Author may not be

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The Deposition
of a Witness
beyond Sea
read.

be found out and punish'd, choos'ing rather to suffer something our selves.

Judge. Will you but say upon your Honesty, you made it not?

The Court offer to acquit him if he will say he did not write the Book.

Udal. That is all one: I make Conscience of my Word, as of my Oath.

Judge. You of the Jury consider this, if he were not guilty he would clear himself. Do not stand in it, Mr. Udal, but confess it, and submit your self to the Queen's Mercy before the Jury find you Guilty.

Udal. I am not guilty according to my Indictment; I have not offended her Majesty, her Council, or the meanest of her People, in any thing I have done concerning this Cause: And would you have me confess a Fault where there is none?

Then the Deposition of *Henry Sharp* was read, who depos'd, He had heard Mr. *Penry* say, that Mr. *Udal* was the Author of the *Demonstration*.

Daul. Mr. *Penry* was one of your great Acquaintance and Familiars, and you, and *Walgrave*, and he, were at Mrs. *Crane's* House.

Udal. Here is one Man saying that another said so; let the Jury consider what Proof this is.

Hearsay Evidence.

Judge. You of the Jury are not to enquire, whether he be guilty of the Felony, but whether he be the Author of the Book: For it is already set down, by the Judgment of all the Judges, that whoever was Author of that Book was guilty of Felony by the Statute.

The Jury to consider of the Fact only.

Udal. The Statute of 23 *Eliz.* 2. whereupon the Indictment is founded, was made against Papists, who use to slander her Highness with the Terms of Heretick, &c. and not against us. Nor can it be deem'd Felony by that Statute, unless it be done with a malicious Intent, which cannot be said of me, or any such as I am; whose Teaching tends to provoke and persuade the People to yield Obedience to her Majesty, and the Religion receiv'd in her Dominions: And the worst the Author can be charg'd withal, is too much Vehemency against Abuses, but not with any Malice against her Majesty, or the meanest of her Subjects. Again, to bring

Udal's Defence. That the Statute was made only against Papists.

bring it within the Compass of the Statute, the Matter must be false, but this Book is written in behalf of a most true Cause. Lastly, the end of it must be to the Defamation of the Queen's Majesty, or stirring up Rebellion. As to the former, there is none of us but would lay down Lives to ease her Majesty from the minuteſt Pain. And for the stirring up Rebellion; hath any Rebellion or Insurrection appeared, since the Advancement of this Doctrine, among the many People who was affected to it? And if *Her Majesty's Government* had been defam'd, as the Indictment chargeth, it would not be Felony by the abovesaid Statute: For that Act is intended only against them who defame her Highness's Person, and not her Government; for had it respected her *Government*, it would not have been made Temporary, and to last no longer than her Life. And I appeal to your Lordships Consciences, as you will answer to God for my Life: And I pray you tell the Jury, whether you do think the Intent of the Statute were in any sort meant against us, and not rather against the Papists.

The Statute design'd against all who slander her Government.

Judge. The Words and the Intent of the Statute are against all. And you cannot deny your having done it with a malicious Intent against the Bishops, who exercise their Government as the Queen hath appointed them: And so it is by Consequence against the Queen.

Udal. The Author inveigh'd against them, not only because they execute an Authority, which he takes to be unlawful by the Word of God, but also for that they do not the tenth part of that Good, even in those corrupt Callings, which by Law they might do.

Judge. You writ not against them only, but against the State, when you say, It is more easy to live in *England* a Papist, an Anabaptist, of the Family of Love, &c. And doth her Majesty's Laws allow of Papists? This makes evidently against you.

Udal. That is not spoken by the Author in respect of her Majesty's Government and Laws, but in respect of the Bishops, whom your Lordships know to be wholly employed in finding us out, and punishing

nishing of us, not regarding in a manner the punishing any Sin else.

Judge. What, Sirrah, will you not confess any Fault to be in the Book? You seek to excuse all.

Udal. There may be some Fault in the Manner, but surely none in the Matter. This Book toucheth only the Corruptions of the Bishops, and not the Person of her Majesty.

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Judge. Her Majesty being the Supreme Governor of all Persons and Causes, hath establish'd this Government by Bishops, which thou and thy Fellows so strive against; and they exercising this Government by her Majesty's Authority, thou dost not strive against them, but her Majesty's Person, seeing they cannot alter the Government the Queen hath laid upon them.

Impugning the Bishops is impugning the Queen's Authority.

Udal. Her Majesty hath a good Opinion of them for their Gravity and Learning: She believes them when they say all is well: Whereas, if they had Grace to look into these things, and represent them as they be, I doubt not her Majesty, and the State, would quickly redress them: And therefore it was the Author did so charge them.

Judge. Sirrah, you that should have been a Teacher of her Majesty's People, you should have taught your self not to have rail'd upon the Rulers of the People.

Udal. My Lord, you know we hold it not lawful for a Minister to be a Civil Magistrate: If the Queen makes them so, they ought not to accept such Employments. And as to the place in *Exodus*, concerning Railing on the Rulers of the People, that is intended rather of your Lordships, the Judges, than any way to concern the Bishops. As to the 23d of the *Acts*, where *St. Paul* says, *I wist not that it was the High-Priest*, the Meaning of it was, he thought there was no High-Priest then: seeing Christ was come, the High-Priesthood was to cease.

Judge. Is it not written in thy Book, that this Saying will not serve their Turns, *The Queen and Council will have it so*? Whereby it is plain thou didst speak against the Queen and State. Dost thou not say they are not safe, though they have Humane Authority of their side, *But he that is on our side is mightier*

mightier than they? Whereby thou both abasest her Majesty, and also dost threaten them with Force and Violence.

Udal. It is true, that whoever doth unjustly is not safe in it, though all the Princes in the World should defend him in it: But to say that Force and Violence is threaten'd, is farthest from our Meaning: We desire, by all good Means, to commend this holy Cause of Reformation to her Majesty, and the State; and do not look that ever it should by any Force prevail, but that it would please God to honour her Highness with the Advancement of the same.

Judge. These are but Excuses: These malicious Speeches proceeded from thee, and were the Groundwork of all these Libels that have been dispersed since; and thou art known to be the Ring-leader of this Faction.

Udal. There is no reason to charge me with other Mens doings: But I beg leave to say something of the Felony wherewith I am charg'd. When I was before the Council, at the time of my Commitment, I alledged against taking an Oath to accuse my self, that the thing was accounted Criminal, and therefore by Law I was not to answer. And my Lord *Anderson* said, that I said true, if the Case concern'd either Life or Limb; whereby it is manifest, that then my Case was not esteemed Felony.

Judge. Tho' the Judges had not then concluded it, yet it was Law before.

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Felony to impugn the Queen's Authority in Causes Ecclesiastical.

Then the Court acquainted the Jury, that all the Judges of *England* had determined that the Author of that Book was guilty of Felony by the Statute; and that they were to take their Exposition of the Law.

Then the Jury said, What can we find? The Court answered, Find him Author of the Book, and leave the Felony to us.

Mr. *Fuller* said, You are to find him Author of the Book, and also guilty of a malicious Intent in making it: Whereupon Mr. *Daulton* said, what have you to do to speak to the Jury? And Mr. *Udal* desired the Jury to consider, that they were not to

consult

consult about the Life of a Seminary and Popish Priest, but of a Minister of the Gospel.

The Jury having sent and receiv'd several Messages to and from the Court, during their Recess; when the Court was sat in the Afternoon, they brought the Prisoner in guilty of Felony.

The Prisoner is convicted.

The next Morning, being the 25th of July, the Prisoner was call'd to his Sentence. And it being demanded what he could say, why he should not receive Judgment to die? He pray'd to have the Benefit of the last Act of Grace, but was told the Crime he stood convicted of was excepted out of it. However, the Court acquainted him, if he would acknowledge he had offended her Majesty, they would report his Submission, and possibly might procure a Pardon for him. To which he answer'd, he would submit himself to her Majesty, but could not forsake the Cause for which he was call'd in Question; for he held it to be the undoubted Truth of God.

Prays the Benefit of the Act of Grace, but the Crime is excepted.

Judge. I hold your Doctrine to be an undoubted Falshood: And if the Presbytery you seek for were once established, it would soon overthrow the Government: You would bring all Causes under your Cognizance, and excommunicate whom you think fit. You are so hot for this Discipline, that if the Magistrate will not, you will reform your selves. One of you, writing to a Friend, says, *Let us number our hot Brethren, that we may know who will stand to it; for it is high time.* So that if you cannot have it with her Majesty's Consent, you will have it, tho' you make our Hearts ake, as you say in your Book. You would bring the Queen and the Crown under your Girdles: Some of you have gone so far as to say, we have no Church, no Sacrament, no Ministers, nor any Worship of God amongst us. If these things be not look'd into in time, what Confusion shall we have?

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The Court inveighs against his Principles.

To which Mr. Udal answer'd, that though some weak Men, in furtherance of that Cause, had run into Errors, there was no reason to charge their Party with them; for they had taken the greatest Pains

Pains to reclaim them, and unite them to the Church, from which they had separated themselves.

Judge. What do you mean by those Words ; If it come in by that means, it will make all our Hearts ake ; Blame your selves.

Page 154.
The Prisoner
affirms the
Cause is God's.

Udal. My Lords, that Author takes it for granted, that the Cause is God's, and must prevail ; and that if he does not bring it in, in his Mercy, he will bring it in by some Judgment, as Plague or Famine, &c. And this is always God's dealing.

Judge. The Meaning is, That if the Queen will not, yet it shall come in ; the Words are, *Maugre the Malice of all that stand against it.* This Book tends to the Overthrow of the State, and the moving of Rebellion.

Udal. My Lords, We teach that in reforming things amiss, if the Prince will not consent, the Weapons that Subjects are to fight with, are Repentance and Prayers, Patience and Tears.

Judge. You had done well if you had us'd these Weapons rather than made this Book. Well, will you submit your self ? for else I must proceed to Judgment ; nor will I stay Sentence of Death, according to my Office, if you refuse to submit.

Udal. I am ready to receive it ; for I protest before God, the Cause is good, and I am content to receive it, so that I may leave it to Posterity how I have suffer'd for the Cause.

Judge. Let the Cause alone, and say what you will do.

Then Mr. *Udal* kneeling down, said, I refuse not any kind of Submission to her Majesty, and entreat your Lordships to be a Means to her Majesty for me ; and if my poor Papers might come unto her Majesty, or her honourable Council, I would write thus much unto them.

Judge. Will you write thus much to us that we may see it, and commend it to her Majesty ?

He offers to submit.

Udal. I willingly do it.

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Then the Court remanded him to the Prison of the *White Lyon* in *Southwark*, where he remain'd till the Sessions there, the 18th of February 1590.
During

During which time he prefer'd a Petition to her Majesty, that she would have Compassion on him, and grant him her Pardon; vowing to lead the rest of his Life in all humble Obedience to her Majesty.

At the Affizes in *Southwark*, the 18th of *Feb.* 1590, *Udal* says, the Judges urg'd him to make such a Submission as would condemn his Book, and justify the Hierarchy, which he refus'd; and deliver'd in a Paper, containing his Reasons why the Court ought not to proceed to pass Sentence of Death upon him. These were most of them the same he had made use of in his Defence: 1. That the Offence did not amount to Felony: These Offences being usually enquir'd of in the High-Commission Court. 2. That the Jury were directed only to try the Fact, which, without the Intent, could not be Felony. 3. That the Jury were induc'd to find him guilty, partly by Promises it should be no damage to him, and partly by Threats. 4. That the Sense of the Statute was violently wrested, and depraved, by making an Offence against the Bishops, an Offence against her Majesty's Person, because they were Part of the Body Politick. 5. That the Offence, not being committed with a malicious Intent, did not amount to Felony. 6. The Witnesses ought to have been produc'd, and given Evidence *viva voce*; and that Depositions taken before Ecclesiastical Commissioners were no Evidence. 7. That, even by such Evidence, he was not prov'd to be the Author of the Book. 8. That if he was the Author, all the Reform'd Churches taught the same Doctrine, and in condemning him they condemned them; and if he were in an Error, that an Error in Judgment ought to receive a milder Punishment. 9. That Sentence being staid last Affizes, on his Submission, he hoped for the same Favour now, on making the like Submission; but that if they put him to Death, they would bring innocent Blood upon themselves, and upon the Land: And as the Blood of *Abel*, so the Blood of *Udal* would cry aloud for Vengeance.

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Causes assign'd
for arresting
Judgment.

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As

His Objections
answer'd by the
Court.

Page 158.

As to his first Reason he did not speak to it, and therefore no Answer was return'd. As to the second, the Court said, he did them wrong; they only inform'd the Jury what the Law was. To the third, the Court said the Jury were left to act according to their Consciences. As to the fourth and fifth, the Court said he was mistaken in the Law; and that one may be within the Compass of Felony, though he do not directly mean any such thing. To the sixth and seventh, they said the Evidence was nevertheless legal, though the Witnesses were not present; and that they were not now to call in question the Proofs, seeing the Jury had thought them sufficient. And being told his Speech tended to prove the Jury perjur'd, he said, he believed they acted according to their Consciences, but that they were unlearned, (although in his third Reason he alledges they were byass'd by Promises and Threats). The Court said, that if there had been no direct Proof against him; yet if, by all Circumstances laid together, the Fact was prov'd, it was sufficient.

The Prisoner urg'd further, that *Chatfield*, one of the Witnesses, had affirm'd his Testimony was not given in upon Oath, but in his Anger, and now he was sorry for it. The Court reply'd, it was too late to object to the Evidence now. The Prisoner said, if it was of any Weight, it ought to be considered to stay the Sentence; that he could not alledge it sooner, because he did not know it till after the Verdict. That *Thomkins*, another Witness, had been heard to say, he could not affirm he was the Author of the Book; but the Court refus'd to hear his Witnesses at the Tryal as to that Point, because it was against the Queen; but he thought it should be for the Queen to hear all things, especially when the Life of any of her Subjects was in question. To the eighth Reason, the Court said he was not call'd in question for *the Cause* (as he call'd it), nor for the Body of the Book, but only for slanderous Things in the Preface against her Majesty's Government. As to his ninth Head, the Court put him in Mind, that he had confess'd himself justly convicted; that he had offended her Majesty, and was
sorry

forry for it, and promis'd he would never do the like again.

Udal. My Lord, though I hold the Matter in the Book to be a most manifest Truth, yet I confess'd the manner of handling, in some part, to be such as might justly provoke her Majesty's Indignation; but I did avow, and will do whilst I live, that the Cause handled in that Book is an undoubted Truth.

The Prisoner insisting so much upon the Cause, the Court told him his Principles tended to Rebellion; that they were for setting up their Discipline, and pulling down the Bishops by Force: Which the Prisoner deny'd. The Court added, that he had affirm'd in his Book, That the Church was committed to the Mistres of the Stews, and ruled by the Laws of a Brothel-house: The Prisoner said, he meant it of the Popish Canon Law. The Court told him these Laws were establish'd by her Majesty's Laws: The Prisoner said, it would trouble the learnedst Lawyer in *England* to prove that.

Then the Court demanded, if he would acknowledge all the Laws Ecclesiastical and Temporal of this Land to be agreeable to the Word of God.

Udal. My Lord, I have Disgrace enough upon me already: You may easily perceive what I think of the present Ecclesiastical Government. I pray you press me not with these things; I can yield no further than you have heard.

Whereupon Sentence of Death was pronounced upon him.

Sentence pass'd upon him.

While he remain'd under Sentence of Condemnation, Doctor *Bond*, one of the Queen's Chaplains, tender'd him a Form of Submission, acknowledging himself the Author of the said Book, wherein false, seditious and slanderous Matters were contained, &c. and promising Obedience both to the Civil and Ecclesiastical Government of this Realm for the future. This Submission Mr. *Udal* refus'd to sign: But set his Hand to another Form of Submission, acknowledging he had been condemn'd of Felony by due Course of Law for publishing the said Book, in the Preface whereof, some Matters, as also the Manner of Writing, he did confess to be so bitter and undutiful, as deserv'd justly to be censured and

Page 160.

Signs his Submission.

punish'd: That he seeing the Grievousness of his Offence, did most humbly, on his Knees, in the Presence of God, submit himself to her Majesty's Mercy; promising, if she would have Compassion on him, to forsake his undutiful and dangerous Courses, and demean himself dutifully and peaceably as became a Minister of the Gospel, and a Loyal Subject to her Majesty.

But protested that he held the Cause debated in that Book to be an undoubted Truth.

That he never imagin'd any Evil against her Majesty, or her Estate; and that he never intended to advance the Discipline but by peaceable Means.

In order to procure his Pardon, he was advis'd to apply himself to Sir *Walter Raleigh*, and send him some Account of his Principles, which had been misrepresented at Court.

His Principles.

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Whereupon he wrote to Sir *Walter*, professing, That he believ'd the Church of *England* to be a part of the true visible Church of Christ; that he was a Preacher in that Church for several Years last past, and communicated in the Sacraments and Prayers, and did utterly condemn the Schism of the *Brownists* in separating themselves from it: That her Majesty ought to have the Supreme Authority in all Causes as well Ecclesiastical as Civil; and that altho' she should command any thing contrary to God's Word, it was not lawful for the Subjects to rebel, so much as in Thought, but with Patience and Humility bear all Punishments laid upon them, seeking only by Prayers to God, and Application to Authority in peaceable manner, to have Faults amended: But in his private Judgment did believe the Church ought to be govern'd Ecclesiastically by the Ministers, assisted with Elders. And he believ'd, that the Censures of the Church ought meerly to concern the Soul, and not impeach any Subject (much less the Prince) in Liberty, Dominion, Goods, or any Earthly Privilege whatsoever: And that the Queen ought no otherwise to be subject to the Censures of the Church, than she profess'd herself to be unto the Preaching of the Word and Administration of the Sacraments.

After-

Afterwards King *James* sent a Letter to the Queen, from *Scotland*, and interpos'd in the behalf of Mr. *Udal*, and the other Puritan Ministers. But the Business of *Hacket* happening about that time, mightily disgrac'd their Cause, and prevented *Udal's* Enlargement. Some time afterwards, Mr. *Udal* made fresh Application to the Court, who refer'd him to the Archbishop: And at length the Archbishop consented to his Enlargement, on Condition he cou'd procure Security that he shou'd transport himself to *Guinea*.

Page 163.
King *James* interposes in behalf of the Puritans.

Udal petitions for Banishment.

The Tryal of ROBERT Earl of Essex, and HENRY Earl of Southampton, the 19th of February, in the 43d of Eliz. 1600, before the Lord Treasurer Buckhurst, who sat as High-Steward, Edward Earl of Oxford, and twenty four other Peers.

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THE Earl of *Essex* desir'd to know of my Lord Chief Justice, whether he might challenge any of the Peers; and it was answer'd that he cou'd not.

No Challenge to a Peer.

After they were arraign'd, and had pleaded Not guilty, Serjeant *Yelverton* open'd the Indictment, and the nature of the Evidence. Then Sir *Edward Coke* the Attorney General shew'd the many aggravating Circumstances this Treason of the Earl of *Essex* was attended with; and enumerated the several Commands and Places the Queen had honour'd him with, and the large Sums she had so bountifully bestow'd upon him, amounting to 30000*l*. The mild Methods the Queen had taken, when she was acquainted with his rebellious Designs, and his Obstinacy and Ingratitude in persisting in them.

Page 165.
Sir *Edw. Coke* Attorney General.

My Lord *Essex* observ'd, That it was usual with Orators to abuse the Court with false Representations of the Facts and Persons they were to try; and desir'd they might have leave to answer every Particular they were charg'd with, as they went along, that nothing might escape their Memories: But my Lord *Essex* was interrupted, and not permitted

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mitted to go on, till the Examination of *Henry Witherington* was read.

Witherington's
Deposition read.

Witherington depos'd, That upon *Sunday Morning* he was sent for to *Effex-house*, where he found the Place guarded with many Gentlemen in Arms; That my Lord *Effex* bad him welcome, and entreated him to go with him, for he fear'd hurt of some private Enemies. That when the Deponent saw the Council were staid, he fear'd Danger to them; for some cry'd out *Stab them*, and others, *Let us make an end of them, We shall have the fewer to deal withal*. And he deposed farther, that Orders were left, that if the Earl should miscarry in *London*, the Lord Keeper, and the Lord Chief Justice shou'd be kill'd. And that when the Committee of Council commanded him upon his Allegiance to dissolve his Forces, he answer'd nothing.

The Earl of *Effex* protested solemnly, he never heard the Words mention'd by *Witherington*; That he came voluntarily to his House, and was as forward as any Man there. That, as for locking up the Council, he did it to preserve them from the Rabble. And that what he did was in order to his own Defence, without any disloyal Intentions towards the Queen. That his Friends, who were assembled at his House, were under such Apprehensions of being attack'd by their Enemies, that it was not in his Power suddenly to dissolve them. And that one reason of their being thus alarm'd, was Sir *Walter Raleigh's* desiring Sir *Ferdinando Gorges* to leave them, or they wou'd be all lost.

Page 167.
Sir *Walter Raleigh's* Evidence.

Sir *Walter Raleigh* depos'd, That he met Sir *Ferdinando Gorges* upon the Water, who told him my Lord *Effex* had put himself into a strong Guard at his House; and that that was like to be the bloodiest Day's Work that ever was; wishing him to go to Court with speed, for prevention thereof. And that Sir *Walter* wish'd him to refuse the Company, or he wou'd be undone.

Southampton. When I came to *Essex-house*, I protest I had not above ten or twelve Men attending me, which was but my usual Company; therefore far from purposing to raise a Tumult.

Sir Ferdinando Gorges's Confession read.

He deposed, That in *January* last, the *Earl of Essex* wrote him a Letter, complaining of his Misfortunes, and the miserable Estate he stood in; and that he purpos'd shortly to free himself, and therefore pray'd *Sir Ferdinando Gorges* to come up to *London* to him. That he came accordingly, and the *Earl* told him how mightily he was cross'd and discredited by his private Enemies, which he cou'd not endure; and said, he had 120 *Earls*, *Barons*, and *Gentlemen*, that participated in his discontented Humour, and wou'd join with him, and desir'd his Help and Council therein. The *Earl* also told him, he had a special Friend at Court, who gave him Intelligence from time to time. That they held themselves indifferently affected by the Citizens of *London*, and hop'd to have a good Party in *Wales*. That they had two several Meetings at *Drury-house*, to consult of these Matters; and it was propos'd, whether it were better first to surprize the Court, or take the Tower, or to stir in the City; but most agreed first to surprize the Court. That *Sir John Davis* took a Pen and Ink, and set down, That some should keep the Hall, some the Court-gates, some the Guard-chamber, and some the Presence-chamber; saying many of the Guard had been the *Earl of Essex's* Servants, and were prefer'd to the Queen by him, and wou'd be better to deal with than others; and so my Lord might have a way through his own Guards to come to the Privy-chamber, and the Presence of the Queen. That he demanded of the *Earl*, what so small a Number of Men wou'd be able to do in such an Action, and dissuaded him from surprizing the Court; but advis'd him, rather to submit himself to the Queen's Mercy, than to proceed further. And that the *Earl of Southampton* said at *Essex-house*, Is it not three Months since this Plot began, and shall we resolve

Sir Ferdinando Gorges's Confession read.

Evidence of the Prisoner's Design to surprize the Court, take the Tower, &c.

on nothing? Then upon a sudden they all agreed, first to stir in *London*, where they assur'd themselves of great Favour. That after the Council were lock'd up, this Deponent follow'd the Troops into *London*; and after some Advice, the Earl sent him back again with a Token to deliver the Lord Chief Justice, by means whereof he set my Lord Keeper, and the rest, at liberty.

Sir Charles Danvers's Examination was read.

Danvers's Confession to the same effect.

He depos'd, That before *Christmas* last, the Earl of *Essex* enter'd into Consideration, how he might secure himself to have access to the Queen's Presence, without Resistance. And that the Resolution was agreeable to certain Articles, written with the Earl of *Essex's* own Hand, and sent to the Earl of *Southampton* to surprize the Court. That there were several Consultations about it, and the Points agreed on were these; First to take the Tower, for it wou'd command *London*: Then to surprize the Court: And after the Court being taken and possess'd, to have assembled the rest of their Friends, and to have presented themselves to the Queen. And that being done, and the Guards secur'd, Sir *Christopher Blunt* was to keep the outward Gates of the Court, Sir *John Davis* the Hall and Water-Gate, and Sir *Charles Danvers* (this Deponent) shou'd keep the Presence and Guard-Chamber; and seize upon the Halbards and Pensioners Battle-Axes. And they were also to seize the Captain of the Guards. These things being accomplish'd, the Earl of *Essex* resolv'd immediately to have call'd a Parliament, to reform Disorders and private Grievances.

Essex designs to call a Parliament.

Sir *John Davis* depos'd to the same effect, adding, That the Earl of *Essex* being ask'd how he would deal with Offenders, and such as resisted him, answer'd, he wou'd admit them all to an honourable Tryal.

And to have alter'd the Government.

Sir *Christopher Blunt* depos'd much to the same Purpose; and said further, That the Earl of *Essex* intended, after the Accomplishment of these things,

to

to have alter'd the Government. This Deponent also confess'd, that he, this Deponent, had been reconcil'd to the Pope; and that the Earl of *Essex* said, He did not know why any should be troubled for Religion, and Liberty of Conscience. And that he receiv'd Letters from the Earl of *Essex*, the 20th of *January*, to come to *London*, and accordingly he came.

The Earl of *Rutland* depos'd, That he heard the Earl of *Essex* cry out in the Streets of *London*, *England is bought and sold to the Spaniard*. That the Earl of *Southampton* and Sir *John Davis* were in special Confederacy and Trust with the Earl of *Essex* in these Matters; and that he had observ'd the Earl of *Southampton* to be very much discontented. Also that the Earl of *Essex* said he was sure of Sheriff *Smith*.

Essex's Pretence that England was sold to the Spaniards.

The Lord *Cromwell* depos'd, that the Earl of *Essex* coming through *Fleet-street*, where this Deponent lay, the Earl sent his Man for him, and he came to him, where my Lord, and divers of his Followers, took him by the Hand, and had him welcome. And the Earl cry'd, *It is for the good of the Queen, and of you all, my Masters*. That the Earl went first to the Mayor's House, and then to Sheriff *Smith's*. And being in *Gracechurch-street*, and hearing the Proclamation, the Earl of *Essex* said, *Where is the Sheriff? let him bring Muskets and Pistols, for I am credibly inform'd out of Ireland, that England is sold to the Spaniard*. That this Deponent left him and his Company on the Proclamation.

The Lord *Sands* depos'd, That he was sent for the Sunday Morning the Disturbance was by the Earl of *Essex*, and coming to *Essex-house*, he found but few there; but that in a short time after, the Earl of *Southampton* came with the rest. He confesses he went with the Earl of *Essex* into *London*, and came back with him to *Ludgate*; and being repuls'd there, my Lord *Essex* cry'd, *Charge, Charge*, and call'd for his Horse. And he saith, that Sheriff *Smith* was as far in the Matter as the best of them.

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The Lord *Monteagle* depos'd, That being with the Earl of *Effex* in *Gracechurch-street*, when the Lord *Burleigh* came with the Herald of Arms and made Proclamation: He heard the Earl command his Followers to bid the Herald stay, for he wou'd not hear him abuse the Queen's Name. He saith also, he went back with the Earl to *Ludgate*, and they were repuls'd.

The Earl of *Effex* denies, that he had ever any other Design, than to present himself in a peaceable manner, with eight or nine honourable Persons, who had just cause of Discontent, before the Queen, to intreat her to remove some evil Counsellors, who had abused her with false Informations of them, particularly *Cobham*, *Cecil*, and *Raleigh*. And that he never intended any hurt to her Majesty, notwithstanding what the Witnesses had depos'd, who testified against him to save their own Lives.

Southampton. It was a foolish Action, I must needs confess, the going through the Town. But my Lord's Purpose to have Men planted at the Court, was in regard he fear'd hindrance by private Enemies that wou'd have stop'd his Passage to the Queen; which I protest he intended to no other End, but to prostrate himself at her Majesty's Feet, and submit to her Mercy.

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Baron. It is evident my Lord of *Effex* had in his Heart a Design against the Government; and now, to excuse himself, he lays the Cause upon particular Enemies. He puts me in mind of *Pisistratus*, who having a purpose to procure the Subversion of a Kingdom, in order to gain the Citizens, cut his Body overthwart, to the end they might conjecture he had been in Danger. My Lord's Design was the same; if the Citizens had espous'd his Cause, he might have gain'd his Ends.

Effex. My Lord, I do here protest before the living God, that an honourable, grave, and wise Counsellor hath lamented and grieved at the Courses he hath seen taken, and therewith hath wished himself often dead. And I can prove it from Sir *Robert Cecil*'s own Mouth, that he, speaking to one of his

his Fellow Counsellors, should say, that none in the World, but the Infanta of *Spain*, had right to the Crown of *England*.

Sir Robert Cecil being in Court, desir'd him to name the Counsellor; and my Lord *Southampton* said it was the Comptroller: Whereupon Sir Robert desir'd the Lord High-Steward he might be sent for. When Mr. Comptroller came, he said, he remembred, that once, in Mr. Secretary Cecil's Company, there was a Book read that treated of such Matters, but that he never heard Mr. Secretary use any such Words.

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My Lord *Southampton* declar'd he had no Design against her Majesty: but being allied to the Earl of *Essex*, he intended only to assist him in his private Quarrel. And my Lord *Essex* said he had no other Design in going into the City, than to surrender himself to the Lord Mayor, &c.

Mr Attor. Gen. My Lord, if you had no other Purpose, why did you go into *Gracechurch-street*, and *Fenchurch-street*, crying out all the way, *England is bought and sold to the Spaniard*?

Southampton. I never heard any such Words, neither did I hear the Proclamation said to be made by my Lord *Burleigh*. And whereas, Mr. Attorney, you have charg'd me with being a Papist, I was never conversant with any of that sort.

Then my Lord *Essex* made Protestations of his Innocency, and that he never had any Design upon the Crown of *England*, as Mr. Attorney General had suggested; and that he was no Papist, or a Favourer of Sectaries, as my Lord *Canterbury* could testify.

Baron observ'd how weak and slender their Defence was, and compar'd it to the Duke of *Guise's*, who came upon the Barricadoes of *Paris*, in his Doublet and Hose, attended with eight Men, in confidence the City wou'd join him; but being disappointed, he was oblig'd to surrender himself; and then alledg'd the occasion thereof to be a private Quarrel.

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Essex. My Lord, I confess it was my Fault to stand out and maintain my House with Defence and Resisting.

The Terms
Essex surren-
der'd upon.

Refisting. And I will not deny but my Lord *Southampton*, and Sir *Charles Danvers*, did persuade me to parly with my Lord General; and I hope your Lordship remembers I yielded upon these Terms: *First*, That I might have an honourable Tryal. *Secondly*, That I might deliver my Grievs to the Queen. *Thirdly*, That I might go in safety. *Fourthly*, That I might have my Minister with me. *Lastly*, And which I chiefly beg of her Majesty, that she wou'd be pleas'd to redeem some that were with me in the House, and guiltless, for Knowledge, Intent or Action, of what was by me purposed; all which I thought good to remember, and so humbly submit the same to her Majesty's gracious Pleasure.

The Judges deliver their Opinion to the Peers after they were withdrawn.

Then the Prisoners were withdrawn, and the Peers went together in a private Place, prepar'd behind the Chair of State; and the two Chief Judges, and the Lord Chief Baron, were sent for in to them to deliver their Opinions in point of Law. After half an Hour they return'd, and the Lord Steward demanded of them severally, beginning with my Lord *Thomas Howard*, the youngest Lord, Whether *Robert Earl of Essex* were guilty of the Treason whereof he stood indicted? To which he answer'd, guilty of High-Treason; and in like manner, the rest of the Peers, as the Question was demanded of them, respectively found him guilty. And being call'd over again, they also found *Henry Earl of Southampton* guilty of High-Treason. Then the Lieutenant of the Tower was commanded to bring his Prisoners to the Bar again.

They are convicted.

Sentence pass'd.
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Then the Clerk of the Crown demanded of them respectively, What they cou'd say why they should not have Judgment of Death? My Lord *Southampton* said, his Ignorance of the Law had made him incur the Danger of it; and that the Court were Witnesses he was condemn'd by the Letter of the Law, and therefore hop'd to find Mercy with her Majesty. But nothing material being offer'd in Arrest of Judgment, Sentence was pass'd on them, by the Lord High-Steward, as usual in Cases of High-Treason. And then the Court broke up.

The Tryal of Sir WALTER RALEIGH, Knight, at Winton, the 17th of November, 1 Jac. 1. 1603. Before the Right Honourable Henry Howard Earl of Suffolk, Lord Chamberlain, Popham and Anderson Chief Justices, and the rest of the Commissioners appointed for that Purpose.

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THE Indictment set forth, " That the said Sir
 " *Walter Raleigh*, on the 9th of June last, did
 " meet the Lord Cobham, at *Durham-House* in the
 " Parish of *St. Martins in the Fields*; and then and
 " there consulted how to advance *Arabella Stuart*
 " to the Crown of this Kingdom; and that to effect
 " their intended Treasons, it was agreed that the
 " Lord Cobham shou'd go over to the Archduke *Al-*
 " bert, and to the King of *Spain*, in order to pro-
 " cure them to assist and further her pretended
 " Title. And it was farther agreed, that the said
 " *Arabella* should write to the said Archduke, the
 " King of *Spain*, and the Duke of *Savoy*, promising
 " to establish a firm Peace between *England* and
 " *Spain*, to tolerate the Popish Religion, and to
 " be ruled by them, in contracting her Marriage.
 " That Cobham, at the Instigation of the said Sir
 " *Walter Raleigh*, did write to Count *Aremberg*,
 " Embassador from the Archduke, for the obtaining
 " 600000 Crowns, for carrying on these Designs,
 " which Sum the said *Aremberg* did, by other Let-
 " ters to the said Lord Cobham, promise to pay; and
 " that Cobham promised to *Raleigh* 8000 Crowns of
 " the said Money, when he shou'd receive it,
 " which the said Sir *Walter* agreed to accept. And
 " the said Sir *Walter*, the more to disable and deprive
 " the King of his Crown, and confirm the said
 " Cobham in his traiterous Intentions, did publish a
 " Book falsely written against the most just and
 " royal Title of the King, contrary to the Duty of
 " his Allegiance, the King's Peace, &c.

The Indictment for High-Treason, in conspiring to depose the King, and set up the Lady *Arabella Stuart*; and corresponding with *Spain* for that Purpose.

And for publishing a Book against the King's Title.

To

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To which Indictment Sir *Walter* pleaded Not guilty. And then the Jury were Sworn, Sir *Walter* making no Challenge to any of them.

Sir *Edw. Coke*
the Attorney
General.

Heale, the King's Serjeant, open'd the Indictment. And Sir *Edward Coke*, the King's Attorney General, afterwards gave an Account of another Plot, which he calls the Bye, carried on by the Lord *Grey, Brook, Markham*, and others, to surprize the King and Court; and observes that the Conspirators gave out, that the King was no King till he was crown'd, and therefore every Man might right his own Wrongs. To which he answers that the King is *Rex natus*, and that his Dignity descends to him.

There can be no
Inter-regnum in
England.

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Raleigh. You Gentlemen of the Jury, remember I am not charg'd with the Bye Plot, that being the Treason of the Priest.

The Attorney General answer'd he was not; and then proceeded to give an Account of some Treasons that had been committed in former Reigns; and observ'd, that Religion and the publick Good were the usual Pretences for Rebellion. He endeavour'd to aggravate the Prisoner's Crimes in particular, and charges him with a Design, not only of destroying the King (on whom he bestows very large Encomiums) but his Children also, and extirpating his Posterity.

Raleigh. To whom do you speak this? You tell me News I never heard of.

Attor. Gen. Oh, Sir, do I? I will prove you the notoriousest Traitor that ever came to the Bar. After you had taken away the King, you would have alter'd Religion.

Sir *Walter*. Prove one of these Things where-with you have charg'd me, and I will confess the whole Indictment, and that I am the horriblest Traitor that ever liv'd, and worthy to be crucified.

Attor. Gen. I will prove all. Thou art a Monster; thou hast an *English* Face but a *Spanish* Heart; *Aremberg* was no sooner come to *England*, but you invited *Cobham* to go to him, and deal with him for Money to bestow on discontented Persons, to raise Rebellion in the Kingdom.

Raleigh.

Raleigh. Let me answer for myself.

Attor. Gen. Thou shalt not.

Raleigh. It concerneth my Life.

L. C. Just. Sir *Walter*, Mr. Attorney General is but yet in the general, when the King's Council have given the Evidence wholly, you shall answer every Particular.

The Attorney General went on aggravating the Prisoner's Offence, and bestowing on him abundance of scurrilous Epithets; and charges him with being the Contriver of my Lord *Cobham's* Treason.

Raleigh. If my Lord *Cobham* be a Traitor, what is that to me?

Attor. Gen. All that he did was by thy Instigation, thou Viper, thou Traitor.

Raleigh. It becometh not a Man of Quality and Virtue to call me so; but I take Comfort in it, it is all you can do.

Popham. Sir *Walter*, Mr. Attorney General speaketh out of the Zeal of his Duty, for the Service of the King, and you for your Life. Be valiant on both sides.

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Then the Lord *Cobham's* Examination was read; Wherein he confesses a Design of going over to the Archduke, to confer with him about these Practices; and that knowing the Archduke had not Money, he had a Passport to go into *Spain*, to solicit that King for 600000 Crowns; and that he was to return by *Jersey*, where he was to meet Sir *Walter Raleigh*, and confer with him concerning the Distribution of the Money to the Discontented in *England*. And the Examinant exclaimed against Sir *Walter Raleigh*, calling him Villain and Traitor, and said he had not enter'd into these Courses, but by his Instigation; and that he would never let him alone. But he likewise confess'd, that he was afraid of *Raleigh*, that when he should return by *Jersey*, he would deliver him and the Money to the King.

Lord *Cobham* deposes what he did was by *Raleigh's* Instigation.

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Cobham's Second Examination read.

He depos'd, That his Purpose was to go into *Flanders* and into *Spain*, for the obtaining of the afore-said

said Money; and that *Raleigh* had appointed him to meet him in *Fersey*, as he return'd home, to advise him about the Distribution of the Money.

Raleigh. This is all the Evidence can be brought against me. At my first Examination at *Windsor*, my Lords ask'd me, what I knew of *Cobham's* Practice with *Aremberg*? I answer'd negatively. And as concerning *Arabella*, I protest before God, I never heard one Word of it; it's strange it should be imputed to me, who never so much as heard the Name of *Arabella Stuart*. It is not likely that I should send *Cobham* to *Spain*, to persuade the King to disburse so much Money, who so well knew the State of *Spain*; I knew the *Spaniard* had had six Repulses, three in *Ireland* and three at Sea; that he was discourag'd and dishonour'd, and altho' he has had six or seven score Sail of Ships in Port, he hath now but six or seven. I knew that of twenty-five Millions he had from his *Indies*, he hath scarce one left. I knew him to be so poor, that the Jesuits in *Spain*, who were wont to have such large Allowances, were fain to beg at the Church-door. And was it ever heard that a Prince should disburse such a Sum of Money without some Pledge? Can it be thought, he would let *Cobham* have so great a Sum? Besides, I had written a Discourse, which I intended to present to the King, against Peace with *Spain*; and I was never at my Lord *Cobham's*, but to assist him in his private Concerns.

Popham. *Cobham* refusing to set his Hand to his Examination, unless I said he ought, I was sent for, and the Lords questioning with him about a Letter, he desir'd to see the Letter again, and then cry'd out, *O Wretch! O Traitor!* whereby I perceiv'd you had not perform'd that Trust he had repos'd in you.

Raleigh. He is as passionate a Man as lives, for he hath not spar'd the best Friends he hath in *England* in his Passion. And methinks, my Lord, when he accuses a Man, he should give some account and reason of the Undertaking; and if my Lord *Cobham* had trusted me with the Main, was I not as fit to be trusted in the Bye?

L. Cecil.

L. Cecil. Raleigh did by his Letters acquaint us, that my Lord Cobham had sent *Lawrency* to *Aremberg*.

L. Henry Howard. You were acquainted with Cobham's Practice with *Lawrency*.

Attor. Gen. You say that Cobham accus'd you in a Passion: Would he accuse himself in a Passion, and ruin his Posterity out of Malice to accuse you? Besides, Cobham had said two Months before to his Brother Brook, *You are Fools, you are on the Bye, Raleigh and I are on the Main; we mean to take away the King and his Cubs.*

Raleigh. Let it be prov'd that Cobham said so.

Attor. Gen. You say Cobham did not subscribe his Examination at first; but besides that, he was not then press'd to subscribe, it being testify'd by the Lords, it is of as great force as if he had subscrib'd. You say also, That if the Accuser be alive, he must be brought Face to Face to speak; and alledge the 25 *Edw. III.* That there must be two sufficient Witnesses brought Face to Face before the Accused.

Raleigh. You try me by the *Spanish* Inquisition, if you proceed only by the Circumstances, without two Witnesses. Good my Lords, let it be prov'd either by the Laws of the Land, or the Laws of God, that there ought not to be two Witnesses; if Christ requires it, as it appeareth, *Matt. 18*; if by the Canon Civil Law, and God's Word it be requir'd, bear with me if I desire one.

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L. C. Just. The 25 *Edw. III.*, which requires two Witnesses, is repeal'd; it sufficeth now if there be Proofs made, either under-hand, or by testimony of Witnesses; and it needs not the Subscription of the Party, so there be Hands of credible Men to testify the Examination.

The Judges give their Opinions, that the 25th of *Edw. III.* is not in force; and that two Witnesses are not necessary.

Raleigh. If that Law be repeal'd, yet I hope the Equity of it remains still: But if you affirm it, it must be a Law to Posterity. The Tryal at Common Law is by Witness and Jury; let Cobham be here, let him speak it. Call my Accuser before my Face and I have done.

Attor. Gen. You acknowledg'd Cobham promis'd to come home by *Jersey*, in his Return from *Spain*, and said it was to make merry with you and your Wife.

Raleigh.

Raleigh. I said in his Return from *France*, not *Spain*.

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Here a Letter of the Lord *Cobham's* was read, which was, in effect, the same with his Examination. And *Lawrency's* Examination was read, importing, That within five Days after *Aremberg* arriv'd, *Cobham* resorted to him; and that *Raleigh* sup'd with *Cobham* that Night *Cobham* went with *Lawrency* to *Aremberg*.

The Attorney General affirms circumstantial Evidence is sufficient in Treason.

Attor. Gen. The Crown will never stand one Year upon the Head of the King, my Master, if a Traitor may not be condemn'd by Circumstances.

Sir Walter Raleigh's Examination read.

He confess'd *Cobham* offer'd him 8000 Crowns, which he was to have for the furtherance of the Peace between *England* and *Spain*, and that he should have it within three Days. To which, he said, he gave this Answer, *When I see the Money I will tell you more: For I thought it to be one of his ordinary idle Conceits, and therefore made no account thereof. He offer'd me the Money before Aremberg came.*

L. Henry Howard. Alledge me any Cause why you gave ear to my Lord *Cobham* for receiving Pensions in Matters you ought not to deal with.

Raleigh. Could I stop my Lord *Cobham's* Mouth?

L. Cecil. *Sir Walter* presseth that my Lord *Cobham* should be brought Face to Face; how shall we, that sit here as Commissioners, be satisfy'd, whether he ought to be brought, unless we hear the Judges speak?

The Judges hold that the Witnesses need not be produc'd Face to Face.

L. C. Just. This thing cannot be granted, for then a number of Treasons should flourish; the Accuser may be drawn, by Practice, to retract what he had depos'd, whilst he is here in Person.

Judge Gawdy. The Statute you speak of, concerning two Witnesses in case of Treason, is found to be inconvenient, therefore by another Law it was taken away.

Brook's Examination was read.

Who

Who being ask'd what was meant by this Jargon, *The Bye* and *The Main*; said, by *The Main* was meant the taking off the King and his Issue: And that he thought in his Conscience it was infused into his Brother's Head by *Raleigh*.

Cobham's Examination, as to the Book.

He depos'd, he had a Book of *Raleigh*, written against the Title of the King; and that he gave it to his Brother *Brook*: And *Raleigh* said it was foolishly written.

Cobham's Deposition as to the Book.

Raleigh. I never gave it him, he took it off my Table.

L. Howard. Where had you this Book?

Raleigh. In the old Lord Treasurer's Study, after his Death, the Book was in Manuscript; and the Treasurer had wrote in the Beginning of it, with his own Hand, *This is the Book of Robert Snaggs*. I think it a very severe Interpretation of the Law, to bring me within compass of Treason for this Book, writ so long ago, of which no Body had read any more than the Heads of the Chapters, and which was burnt by *George Brook*, without my Privy. Put the Case I should come to my Lord *Cecil's*, as I have often done, and find a Stranger with him, with a Packet of Libels, and my Lord should let me have one or two of them to peruse; this I hope is no Treason. Here is a Book supposed to be treasonable, I never read it, commended it, or deliver'd it, nor urg'd it.

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Att. Gen. Why this is cunning.

Raleigh. Every thing that makes for me is cunning, and every thing that makes against me is probable.

Another part of *Cobham's Examination* was read.

He deposes, That *Kemish* brought him a Letter from *Raleigh*; and that part which was concerning the Lords of the Council, was rent out. The Contents of the Letter were, That he had been examin'd, and clear'd himself of all: And that *Kemish* said to him from *Raleigh*, that he shou'd be of good Comfort, for one Witness cou'd not condemn a Man for Treason.

Raleigh.

Raleigh. *Kemish* added them, I never bad him speak those Words.

The Lady Arabella Stuart
clear'd of the
Conspiracy.

L. Cecil. *Cobham* confess'd he heard from you every Day in the Tower. But here hath been a Reflection on the Lady *Arabella Stuart*, a near Kinswoman of the King's; let us not scandal the Innocent, she was ignorant of all these things, only she receiv'd a Letter from my Lord *Cobham*, to prepare her, which she laugh'd at, and immediately sent it to the King.

Then the Lord Admiral (*Nottingham*) being by in a Standing, with the Lady *Arabella*, spake to the Court, and said, *The Lady doth here protest, upon her Salvation, that she never dealt in any of these Things; and so she willed me to tell the Court.*

L. Cecil. *Brook* saith his Brother mov'd him to procure *Arabella* to write Letters to the King of *Spain*, but he saith he never did it.

Raleigh. The Lord *Cobham* hath accused me, and you see in what manner he hath forsworn it; and were it not for his Accusation, all the rest were nothing. Let him be ask'd if I knew of the Letter which *Lawrence* brought from *Aremberg*. Let me speak for my Life, it can be no hurt for him to be brought: He dares not accuse me. If you grant me not this Favour, seeing he is alive and in the House, I am strangely us'd. *Campion* was not denied to have his Accusers Face to Face.

L. C. Just. Since he must needs have Justice, the acquitting of his old Friend may move him to speak otherwise than the Truth.

Raleigh. Gentlemen of the Jury, mark this; he said I was the Cause of all his Miseries, and the Destruction of his House, by my wicked Counsel. If this be true, whom hath he cause to accuse and to be reveng'd of but me? And I know him to be as revengeful as any Man on Earth.

Att. Gen. He is a Party, and may not come, the Law is against it.

L. Cecil. You say that my Lord *Cobham*, your main Accuser, must come to accuse you; and you

you say he has retracted what he depos'd against you. But I say many Particulars are not retracted; and what the Validity of all this is, is left to the Jury.

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Cobham retracted his Accusation of Raleigh.

Then one Dyer was call'd and sworn.

He depos'd, That being at a Merchant's House in *Lisbon*, a Gentleman enquir'd what Country Man he was; he said an *English* Man; whereupon the Gentleman ask'd him if the King was crown'd? and he answer'd No, but he hop'd he shou'd be so shortly. Nay, saith he, *he shall never be crown'd, for Don Raleigh and Don Cobham will cut his Throat e'er that Day come.*

Raleigh. If Cobham practis'd with *Aremberg*, it must be known in *Spain*, and my Name might be made use of, as the Duke of York's with *Jack Cade*, to countenance the Treason. Consider, you Gentlemen of the Jury, there is no Cause so doubtful, which the King's Council cannot make good against Law; they prove nothing against me, only they bring the Accusation of my Lord Cobham, which he hath lamented and repented as heartily as if it had been for an horrible Murder. And is it likely that I, who have spent 40000 Crowns against the *Spaniard*, should now be so affected to him? Would you be contented, on such Presumptions, to be deliver'd up to be slaughter'd, to have your Wives and Children turn'd into the Streets to beg their Bread? If you would be contented to be so judg'd, judge so of me. Cobham hath forsworn what he said; and I appeal to God and the King, in this Point, whether Cobham's Accusation be sufficient to condemn me.

Att. Gen. The King's Safety and your Clearing cannot agree. I protest before God I never knew a clearer Treason. Thou art the most vile and execrable Traitor that ever liv'd.

Raleigh. You speak indiscreetly and barbarously.

Att. Gen. I want Words sufficient to express thy viperous Treasons.

Raleigh. I think you want Words indeed, for you have spoken one thing half a dozen times.

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The Attorney General and Raleigh reflect on each other.

Att. Gen. Thou art an odious Fellow, thy Name is hateful to all *England* for thy Pride.

Raleigh. It will go near to prove a measuring caſt between you and me, Mr. Attorney General.

Cobham's Letter concerning Raleigh.

Then the Attorney General produc'd a Letter, ſaying, What tho' *Cobham* retracted, he could not reſt till he confirm'd his Evidence again. The Subſtance of the Letter was, that *Raleigh* had ſent to *Cobham* in the Tower, to retract what he had ſaid about his coming home by *Jerſey*. That *Raleigh* was to have had 1500 Pounds *per Annum* of the *Spaniard*, to give Intelligence when any thing was deſign'd againſt *Spain*, the *Low Countries*, or the *Indies* : And that *Raleigh* had been the cauſe of his Ruin, for he dealt not with *Aremberg* but by his Inſtigation.

Raleigh. I confeſs I did bid a poor Fellow throw a Letter in at his Window, to this Purpoſe, viz. *You know you have undone me, now write three Lines to juſtify me.*

L. C. Juſt. But what ſay you of the Letter, and the Penſion of 1500 Pounds *per Annum* ?

Raleigh. I ſay that *Cobham* is a baſe diſhonourable poor Soul.

L. C. Juſt. I perceive you are not ſo clear a Man as you have proteſted all this while.

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Then Sir *Walter* produc'd a Letter he receiv'd from my Lord *Cobham*, and deſir'd my Lord *Cecil* to read it, becauſe he knew his Hand. The Letter was to this effect.

Cobham's Letter to Raleigh, wherein he acquits him of the Treason.

“ Seeing myſelf ſo near my End, for the diſ-
 “ charge of my Conſcience, and freeing myſelf
 “ from your Blood, which elſe will cry Vengeance
 “ againſt me, I proteſt, upon my Salvation, I never
 “ practis'd with *Spain* by your Procurement : God
 “ ſo comfort me in this my Affliction, as you are a
 “ true Subject, for any thing I know. I will ſay as
 “ *Pilate*, *Purus ſum a ſanguine hujus*. So God have
 “ Mercy upon my Soul, as I know no Treason by
 “ you.

Here

Here being Letter against Letter, the Attorney General said this last had been procur'd by *Raleigh's* subtle Practices; and that the first was drawn up voluntarily by my Lord *Cobham*, without any Hopes or Promises of Pardon.

And the Earl of *Devonshire* depos'd to that effect, viz. That he wrote it voluntarily.

Then the Jury withdrew, and within a quarter of an Hour brought the Prisoner in guilty. *Raleigh is convicted.*

Sir *Walter* having nothing further to offer in arrest of Judgment, than what he had urg'd at his Trial, The Lord Chief Justice proceeded to pronounce the Sentence, as usual in High-Treason. *Page 187. Sentence pass'd.*

After Sir *Walter* had been confin'd fourteen Years in the Tower, the King granted him a Commission to command a Fleet, that was to take possession of a golden Mine he had formerly discover'd in *Guiana*, in the Southern Parts of *America*. But being unsuccessful in this Voyage, he was confin'd at his Return to *England*; and King *James* willing to sacrifice Sir *Walter* to the Advancement of Peace with *Spain*, he was call'd to his former Sentence; and upon the 29th of *October*, 1618, was beheaded in the Old Palace-yard at *Westminster*. *After 14 Years Imprisonment he is made Admiral. But executed at his Return home.*

It was thought strange that Sir *Walter* should lose his Head upon a Judgment that had lain dormant above sixteen Years: And it was the Opinion of most Lawyers, that the King having, under his Broad-Seal, made him Admiral of the Fleet, and given him the Power of Life and Death over those he commanded, he ought to have been deem'd *Reus in Curia*, and acquitted of all former Convictions. *Page 188. Quere, If his Commission did not amount to a Pardon?*

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The Tryal of ROBERT WINTER, JOHN GRANT, THOMAS BATES, THO. WINTER, AMBROSE ROOKWOOD, ROBERT KEYES, and GUY FAWKES, Conspirators in the Gun-Powder Plot, the 27th of January, 3 Jac. 1. 1605. Before the Earl of Nottingham, the Lord Chief-Justice Popham, and the rest of the Commissioners.

The Indictment.

THE Indictment set forth, " That whereas
 " the King had appointed a Parliament to
 " be holden at *Westminster* for divers Occasions of the
 " State ; *Henry Garnet*, Superior of the Jesuits in
 " *England*, *Oswald Greenwell*, and *John Gerard* Jesuits ;
 " *Thomas Winter*, *Guy Fawkes*, and *Robert Keyes*, Gen-
 " tlemen, and *Thomas Bates*, Yeoman, late Servant
 " to *Robert Catesby* Esq; together with the said Ro-
 " bert Catesby, and *Thomas Percy* Esqs; *John Wright*,
 " and *Christopher Wright* Gentlemen (who were lately
 " slain in open Rebellion against his Majesty) did
 " traiterously meet, and assemble themselves toge-
 " ther : And that the aforesaid three Jesuits did
 " move and persuade the said other Conspirators,
 " that the King, the Nobility, and Clergy of this
 " Realm of *England* (Papists excepted) were Here-
 " ticks ; and that all Hereticks were accursed and
 " excommunicate : And that no Heretick could be
 " King ; but that it was lawful and meritorious to
 " kill the said King, and all other Hereticks within
 " this Realm of *England*, for advancing the Pope's
 " Authority, and restoring the *Romish* Religion :
 " And that to these traiterous Tenets and Persua-
 " sions, the said other Conspirators yielded their
 " Assents : And that thereupon they all did traite-
 " rously conclude, and agree, with Gunpowder bar-
 " barously to blow up, and tear in Pieces, our said
 " Sovereign Lord the King, Queen *Anne*, Prince
 " *Henry*, the Lords Spiritual and Temporal, the
 " Judges, and the Commons, assembled in Parlia-
 " ment.

ment. And did further conspire and conclude,
not only to destroy the King's Issue Male, but to
surprize his Daughters, the two Princesses, *Eliza-*
zabeth and *Mary*, and to proclaim the said *Eliza-*
beth Queen : And that thereupon a Proclamation
should be publish'd, wherein no mention should
be made of the Alteration of Religion at first ;
nor would they acknowledge themselves the Au-
thors and Devisers of the aforesaid horrible Treas-
ons, till they had assembled a sufficient Force ;
and that then they would avow and justify the
same. And that for the better Concealment of the
said Treasons, the said other Conspirators did
take their Corporal Oaths, and receive the Sacra-
ment at the Hands of the said three Jesuits, to
conceal the Treasons aforesaid : And that they
would not reveal them directly or indirectly, by
Words or Circumstances, or ever desist from the
Execution, and final Accomplishment of the same,
without the Consent of three of the aforesaid Trai-
tors first obtain'd : And that by the Advice of the
said three Jesuits, the said other Traitors did agree
to dig a Mine under the Parliament-house, and place
a great Quantity of Powder there ; and that they
did afterwards, with great Labour and Difficulty
dig a Mine in the midst of the Foundation of the
Wall of the Parliament-House, being three Yards
thick ; but that being discourag'd by the Difficulty
of the Work, they hir'd a Cellar under the said
Parliament-House, and adjoining to a certain
House of the Conspirator *Perry*, and then did
remove twenty Barrels of Gunpowder from the
said *Percy's* House into the Cellar aforesaid. And
that afterwards the said *Henry Garnet*, *Thomas Winter*,
Guy Fawkes, and the said other Conspirators, did
traiterously meet, and impart the said Conspiracy
to *Robert Winter*, *John Grant*, *Ambrose Rookwood*,
and *Francis Tresham* Esqrs; and move them to
join therein : To which traiterous Motion the
said *Robert Winter*, *John Grant*, *Ambrose Rookwood*,
and *Francis Tresham*, did traiterously yield their
Assents, and did thereupon severally take their
Corporal Oaths, and receive the Sacrament, for
the Purposes aforesaid. And that the said Con-
spirators

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"spirators provided Horses, Armour, and other
 "Necessaries, for the better effecting the aforesaid
 "Treasons: Also, that the said Conspirators, fear-
 "ing the Powder was become dankish, brought in
 "ten other Barrels of Gunpowder, and at another
 "time four Hogsheads of Gunpowder more, and
 "laid great Iron Bars, and Stones upon them, and
 "cover'd the whole with Billets and Faggots. And
 "that the said *Guy Fawkes* afterwards, for a full and
 "final Accomplishment of the said Treasons, by the
 "Procurement of the said other Conspirators, had trai-
 "terously prepar'd, and had upon his Person Touch-
 "wood and Match, therewith traiterously to give Fire
 "to the several Quantities of Gunpowder aforesaid,
 "at the time appointed for the Execution of the
 "said Treasons: And that the said other Conspira-
 "rators did traiterously fly and withdraw them-
 "selves, not many Hours before the same was to
 "have been executed, to the Intent to stir up and
 "procure such Popish Persons as they could, to
 "join with them in open Rebellion; and to that
 "end did publish divers false Reports, as if the
 "Papists Throats were to have been cut: And that
 "thereupon divers Papists were in Arms, and in
 "open and actual Rebellion against the King in
 "divers Parts of *England*. "

To which Indictment they pleaded not Guilty.

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Sir *Edward Philips*, his Majesty's Serjeant at Law,
 opened the Indictment, but added nothing material,
 nor mentioned any Circumstances, but what are to
 be found in the Indictment itself, save that the
 Design was to have been executed the fifth of No-
 vember, to which Day the Parliament stood pro-
 rogued.

Sir *Edward*
Coke's Harangue.

Sir *Edward Coke*, the King's Attorney, proceeded
 to shew how monstrous, and unprecedented these
 Treasons were; and says, When these things come
 to be related to Posterity, they will be reputed
 Matters *feign'd*, not *done*; and therefore desires Pa-
 tience of the Court, and his Audience, to enlarge
 upon them. He observes, that this Treason tend-
 ed not only to the Destruction of the King, but of
 the

the whole Kingdom ; to the Destruction of the very Frame and Fabrick of this antient flourishing Monarchy ; even to the Deletion of our whole Name and Nation : That it was not only beyond Example, but exceeded any Fiction in the Tragick Poets. He dates the Original of this Plot from the Year 1601, when *Garnet*, and other *Roman* Catholics, sent over to the King of *Spain* to incite him to make an Invasion ; and says, that being disappointed in their Expectations of foreign Aid, they immediately fell upon the Powder-Plot. He observes, that the Persons engaged in this Conspiracy were either of the Clergy or Laity : That those who were of the Laity, were not Men of desperate Fortunes, or unsound Minds ; but Gentlemen of good Houses, and of excellent Parts, and of very competent Fortunes and Estates. That as for the Clergy, he never knew a Plot without a *Romish* Priest in it : And that the principal Managers in this, and those who seduc'd the rest, were not only Priests, but Jesuits of no small Figure ; such as *Garnet*, the Superior of the Jesuits here in *England*, Father *Creswell*, Legier Jesuit in *Spain*, &c. And that they were not only Jesuits, but considerable Statesmen. And then he goes on, and shews what Principles the Jesuits are of, out of *Simanca*. 1. That every Prince, who is an Heretick, is *de Jure*, if not *de Facto*, Excommunicate, and may be deposed and murdered, even before any Sentence pronounc'd against him. 2. That although a Prince be not a profess'd Heretick, but suspected for Heresy, it is the same thing. 3. That if an Heretical Prince would return and conform himself to the *Romish* Church, he might be receiv'd into the Church, but never restor'd to his Kingdom : And if such a King shall have a Son untainted with his Father's Heresy, yet he shall not succeed him. And lastly, for the Definition of an Heretick, he quotes a Book call'd *Philopater*, which says, every Person, who forsakes the Religion of the Church of *Rome*, is an Heretick : And that the Subjects of such a Prince are absolv'd from the Oaths, and may depose him as an Apostate, and Revolver from Christ, and an Enemy to his own State and Commonwealth. That *Tresham*,
in

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The Quality of
the Conspirators.Principles of the
Jesuits.

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in his Book *de Officiis Principis Christiani*, goes farther, and determines, that if a Prince shall but favour or shew Countenance to an Heretick, he immediately loseth his Kingdom: And that where a Prince is depos'd, and his Kingdom bestow'd upon another by the Pope, the People, upon Pain of Damnation, are to take Part with him whom the Pope shall so constitute over them.

That the Jesuits were so far engaged in this Conspiracy, that some of them had said, If it should miscarry, it would be the Overthrow of the Society of *Jesus*: He wish'd they might be true Prophets, and they become like the Order of the *Templarii*, who, by a general Edict, were in one Day throughout Christendom quite extinguish'd as an impious Order.

That Pope *Sixtus Quintus*, in a set Oration, in the Consistory, had applauded *Clement* the Monk for the Murder of *Henry III.* of *France*, and said, *It was a Fact done, not without the Special Providence and Appointment of our good God, and the Suggestion and Assistance of his Holy Spirit*: And that it was a far greater Act than the slaying of *Holofernes* by Holy *Judith*.

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That *Garnet*, the Superior of the Jesuits, had resolved, that this Design of the Powder-Plot was innocent, and might be done, even though it were with the Destruction of many who were innocent, rather than the Action should miscarry. And that Father *Hammond* absolv'd all the Traitors at *Robert Winter's* House, upon *Thursday* after the Discovery of the Plot, they being then in open Rebellion: Therefore, says *Coke*, let all Kings take heed how they favour, or connive at this Order.

2. He mentions the Persons against whom this Treason was intended; the King, Queen, Princes, Nobility, Judges and Gentry, the Representatives of all the Commons: Such an Action, says he, God and Man must condemn and detest, and the Offenders themselves be asham'd of: So miserable a Desolation, such Cruelty, no Mantle of Holiness could cover, no Pretences of Religion excuse, no good Intention extenuate; even the Wicked exclaim'd against it, and all true Christians abhor'd it. Miserable, but yet sudden, had their Ends been,

been, who should have died in that fiery Tempest and Storm of Gunpowder! But more miserable had they been that had escap'd! And what horrible Effects the blowing up so much Powder would have wrought not only on Men and Beasts, but even on inanimate Creatures, Churches, Houses, and all Places near adjoining, he left to those who were Military Men to consider. For himself, *Vox faucibus hæret.*

3. He observes, that this Conspiracy was at a time when the King had shewn the greatest Lenity to Recusants: That in the Space of a Year and four Months, since he came to the Crown, he had not caus'd one Penalty to be levy'd upon them for Recusancy, but had honour'd them equally with his Favours, till the Priests Treason by *Watson* and *Clark*: That they not only were not reclaim'd by this Impunity, but became much worse.

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4. He considers the Place where this Deed was to have been perpetrated, the *Senate-House*, which the Catholicks affirm'd to be the fittest; because *there*, say they, all these unjust Laws had been made against them: Therefore he desired to make it appear, that in those Laws were the greatest Moderation and Equity: For from the 1 *Eliz.* till the 11th, all Papists came to our Church and Service without Scruple: He himself had seen them there, so that for ten Years they made no Conscience or Doubt to communicate with us in Prayer. But after the Bull of Pope *Pius Quintus* was come and publish'd, wherein the Queen was accursed and deposed, her Subjects discharged of their Oaths, and curs'd if they did obey her, then did they refrain coming to Church. Two Years after this, (*viz.*) 13 *Eliz.* there was a Law made against the bringing in of Bulls, &c. Anno 18 *Eliz.* came *Mayne* a Priest, to move Sedition: Anno 20, came *Campion*, the first Jesuit, who was sent to make a Party here in *England* for the Execution of the former Bull, and then followed several treasonable Books. And Anno 23 *Eliz.* after so many Years Forbearance, there were Laws made against Recusants, and seditious Books; but the Penalty for Recusancy was only a pecuniary Mulct, and that only till they would submit

The Reasonableness of the Laws against Recusants.

submit and come to Church, as they had done for ten Years before the Bull. Afterwards, the Jesuits and *Romish* Priests coming over, and swarming in the Kingdom, and poisoning the Queen's Subjects with Notions, that by the aforesaid Bull they were absolv'd from their Allegiance, &c. a Law was made 27 *Eliz.* that it should be Treason for any Person, born a Subject, and made a *Romish* Priest since her Majesty's Accession to the Crown, to come into any of her Dominions: That concerning the Execution of these Laws, it was however to be observed, That whereas during the five Years of Queen *Mary's* Reign, three hundred Persons were put to Death for Religion; during the forty four Years of Queen *Elizabeth*, there were not above thirty Priests Executed, and those for treasonable Practices; and not more than five Receivers and Harbourers of them; and for Religion (only) not any one.

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Then the Attorney takes an Opportunity to explode the Jesuit's Doctrine of Equivocation and Mental Reservation.

Lastly, he gives an Account of the Discovery of the Plot, by a Letter sent my Lord *Monteagle*, &c. And looks upon the King as divinely inspir'd, in so readily interpreting the dark Expressions in it.

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He admires the Clemency and Moderation of the King, in that however these Traitors had exceeded all others their Predecessors in Mischief, yet he was contented with the usual Punishment, and invented no new Tortures for them; and observes the Propriety of the Judgment in High-Treason to the Offence committed.

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The Prisoners
Confessions be-
fore the Council
read as Evi-
dence against
them.

Afterwards the Attorney directed their several Examinations to be shewn them, which were subscrib'd by each of them; and wherein every one of them had confess'd the Treason; and they acknowledg'd the same in Court to be true: And altho' this was sufficient for their Conviction, the Attorney, for the Satisfaction of the Audience, desir'd the same might be openly read; which was done accordingly.

After

After the Reading of their several Examinations, Confessions, and voluntary Declarations, as well of themselves, as of some of their dead Confederates, the Jury brought them all in Guilty of the Treasons contain'd in the Indictment. (Note, Garnet was not tried at this time, but reserv'd to be tried by himself.)

They are convicted.

Being severally asked what they had to say why Judgment of Death should not be pronounced against them; they said little in their Defence, or Extenuation of the Fact. And *Guy Fawkes* being ask'd why he pleaded not Guilty, having nothing to say in his Excuse: He said, he did it in respect of certain Conferences mentioned in the Indictment, which he said he knew not of. It was answer'd, they were set down according to Course of Law, as necessarily pre-suppos'd before the Resolution of such a Design.

Sir *Everard Digby* was also indicted and arraign'd for being privy to the said Conspiracy, taking the aforesaid Oath of Secrecy, and being an Actor in it.

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Sir *Everard Digby* Arraign'd for the same Conspiracy, and pleads Guilty.

To which Indictment he pleaded Guilty: And only said in his Excuse, that he was induc'd to enter into this Conspiracy, as apprehending his Majesty had broken his Promise, of being favourable to the Catholicks in *Scotland*, before he came to the Crown of *England*: Which Aspersions the Earls of *Salisbury* and *Northampton* clear'd his Majesty of, by shewing, that the King gave them no such Encouragement as was pretended.

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Then Sentence was pronounc'd on Sir *Everard Digby*, *Robert Winter*, *John Grant*, and *Thomas Bates*; *Thomas Winter*, *Ambrose Rookwood*, *Robert Keyes*, and *Guy Fawkes*; and the four first were executed at the West-end of *St. Paul's*, the rest in the Old-Palace Yard at *Westminster*,

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The Arraignment of HENRY GARNET, Superior of the Jesuits, the 28th of March, 3 Jac. I. 1606. Before Sir Leonard Holyday Lord-Mayor, the Earl of Nottingham, Sir John Popham Lord Chief-Justice, and the rest of the Commissioners, at Guild-Hall.

SIR John Croke, the King's Serjeant, opened the Indictment; *which see in the preceding Trial.*

Sir Edward Coke, the King's Attorney, gave an Historical Account of the Practices of the Jesuits from their first coming into *England*; as also of their Principles: And took notice of the many aggravating Circumstances this Plot was attended with, as he had done at the preceding Tryal. Then the Confessions of *Garnet*, and his Accomplices, were read, and two Witneses were examin'd against him *viva voce*; (*viz.*) Mr. *Lockerson* and Mr. *Fauset*; who depos'd, that they had heard *Garnet* say to Hall: *They will charge me with my Prayer for the good Success of the great Action, in the beginning of the Parliament; but I will tell them, that I meant it in respect of some sharper Laws, which I fear'd they would then make against Catholicks.*

Garnet's Defence.

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As to Equivocation.

Garnet answer'd, as to Lying and Equivocation, with which Mr. *Attorney* had charged their Order; that their Church condemn'd all Lying, but especially in Cases of Religion and Faith; and that of eight Degrees of Lying, which St. *Austin* mentions, the lowest was to Lie to procure the Good of some without hurting of any: So that their Doctrine of Equivocation was not to maintain Lying, but to defend the use of certain Propositions. For a Man may be asked by one who hath no Authority to interrogate, or be examin'd concerning something, which belongeth not to his Cognizance who asketh, As what a Man thinketh, &c. But that no Man might Equivocate when he ought to tell the Truth, otherwise he may. And so St. *Austin*, upon St. *John*,

John, saith, That Christ denied he knew the Day of Judgment, viz. With Purpose to tell it to his Disciples.

That as to the Doctrine of the Power of the Pope to depose Princes, it was the general Doctrine of the Church ; and that it was tolerated by all other Catholick Princes: But that whatever *Simanca*, or other Writers, have said of deposing Hereticks, it is to be understood of those Princes, who, having sometimes profess'd the Faith of the Church of Rome, do afterwards make a Defection from the same.

As to the deposing Doctrine.

That as to the Papists going to Church till the Bull of *Pius Quintus*, he said he knew some that refus'd before ; though most Catholicks did indeed go to Church before that: But it was about the end of the Council of *Trent*, when that Matter was discuss'd by twelve learned Men, and concluded not lawful : And that this was occasion'd by *Calvin* himself, who held it not lawful for any Protestant to be present, not only at their Mass, wherein perhaps they might say there was Idolatry, but at Evensong, which was the same as theirs.

As to the Papists absenting from Church.

That as to the Treasons and Practices of the Jesuits from time to time, which Mr. *Attorney* had mentioned, he held them to be impious, especially in Men of their Profession ; but said, he had talked with some of them about it ; and that they deny'd it.

That as to himself, indeed he was acquainted with a Negotiation in *Spain* for Money, to be bestow'd on poor Catholicks, but ever dislik'd the moving for an Army to be sent hither.

That he was acquainted with the late Plot, but it was by Confession, which he was oblig'd not to discover ; but that he had actually written to Rome upon it, to procure a Countermand of all Conspiracies ; and that he could never sleep quietly after he was acquainted with it.

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Denies he consented to the Powder-Plot.

That as to what *Lockerson*, and the other Witnesses, overheard him say, he did not believe they were perjurd, but that they mistook some things.

The Earl of *Salisbury* reply'd, as to his sending to Rome to countermand all Conspiracies, that Message was

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was sent so very late, that the Blow must have been over before the Messenger could have return'd : And that at his Confession before the Lords, he said he had offered Sacrifice to God for Stay of that Plot, *unless it were for the Good of the Catholick Cause* ; and in no other Manner were the State beholden to him for his Masses and Oblations. The Earl also put him in Mind of the Conference between him and Hall, how stiffly he deny'd it, upon his Soul, before the Lords, and what detestable Execrations he us'd ; and yet as soon as Hall had confess'd it, he grew asham'd, cried the Lord's Mercy, and said, he had offended, if Equivocation did not help him.

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To this Garnet answer'd, That when one is ask'd a question before a Magistrate, he was not bound to answer before some Witnesses were produc'd against him, *Quia nemo tenetur prodere seipsum*.

The Earl of Salisbury demanded, whether in case the Pope, *per Sententiam Orthodoxam*, should Excommunicate the King's Majesty, his Subjects were bound to continue their Obedience ?

To which Garnet refus'd to answer ; but requested, that whereas he had confess'd the receiving of two Briefs, or Bulls, from the Pope in the Queen's Time, by which all Catholicks were forbidden to adhere to any Successor that was not obedient to the Church of Rome, his Majesty would be pleas'd to make a favourable Interpretation, because he had shew'd them to very few Catholicks in England in the Queen's Time : And when he understood that the Pope had chang'd his Mind, then he burnt the Bulls.

Sir Edward
Coke's Reply to
Garnet's De-
fence.

The Attorney-General reply'd to Garnet's Defence : That as to Equivocation, it was true indeed, that outwardly to the World they did condemn Lying and Perjury, because the approving it would render them odious to all Men. But if they did not allow it generally in others, yet in themselves, their Confederates and Associates in treasonable Practices, they would both warrant and defend it.

That the Power of the Pope in deposing Princes, was not the general Doctrine of their Church, or tolerated

tolerated by all Princes, as might appear by the Discourse written to the *French* King against the re-admitting the Jesuitical Faction.

That as to the Catholicks refusing to go to our Churches, upon the Determination of the Council of *Trent*, that was not the Reason ; for that the last Session of the Council of *Trent* was held in the Year 1563, in the fifth Year of Queen *Elizabeth* ; and the Catholicks came to our Churches till the 19th Year of Queen *Elizabeth*.

That *Garnet* did not come to the Knowledge of the Powder-Plot by Confession, but was consulted about it : And that though he had conceal'd the Persons, yet he ought to have discovered the Mischief intended, for the Preservation of the State. But that he was indeed the Author and Procurer of these Treasons, appear'd by his own Confessions, and by resolving *Catesby* concerning the Lawfulness and Merit of it, as had been prov'd : As also by his praying for the Success of it.

Then the Earl of *Northampton* made a Speech to the Prisoner, concerning the Nature of the Crime, and the Weakness of his Defence ; wherein there being no Law, and very little Argument, it is here omitted. But that the Reader may not think any thing is conceal'd that is of Importance for him to know, he may please to take a Specimen of it : The two Bulls that in the late Queen's Time enter'd the Land (with a purpose by their loud lowing to call all their Calves together for the making of a strong Party, at the shutting up of the Evening, against your dread Sovereign) were graz'd in your Pastures, Mr. Garnet : Or to speak more properly (because they durst neither endure the Light, nor admit the Air) they were Stall fed at your Crib, as you your self confess.

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E. of *Northampton's* Speech.

Garnet desired the Jury that they would believe those things he had affirm'd ; and that they would not give Credit to things whereof there was no direct Proof against him ; or condemn him by Circumstances or Presumptions.

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Then the Jury withdrew, and in a Quarter of an Hour brought the Prisoner in Guilty.

The Prisoner is convicted.

Proceedings in the Divorce between the

Whereupon it being demanded what he could say why Judgment should not be given against him; he answer'd he could say nothing, but refer'd himself to the Mercy of the King and God Almighty.

Sentence pass'd.

Then the Lord Chief-Justice pronounc'd Judgment against him as a Traitor.

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The Proceedings in the Divorce between the Lady FRANCES HOWARD, and ROBERT Earl of Essex. Before the King's Delegates, George Archbishop of Canterbury, John Lord Bishop of London, — Bishop of Winchester, Lancelot Bishop of Ely, Richard Bishop of Litchfield and Coventry, Doctor Cæsar, Thomas Parrey, Doctor Donne, John Bennet, Francis James, and Thomas Edwards, 11 Jac. I. 1613.

The ALLEGATIONS.

The Lady Frances's Allegations in order to obtain a Divorce.

1. **T**HAT she the said Lady Frances at the time of the Marriage was thirteen Years old, and is at this time twenty two or twenty three.
2. That she and Robert Earl of Essex were married by publick Rites and Ceremonies of the Church, in January 1603.
3. That the aforesaid Robert, at the time of the pretended Marriage, was about fourteen, and is about twenty two or twenty three at this time; that during all that time he hath been in good Health, and no way hindred by Ague or Sicknes, but that he might have carnal Copulation with a Woman.
4. That since the pretended Marriage, at least by the Space of three Years, since the said Robert had fully attain'd the Age of eighteen Years, as Time and Place did serve, after the Fashion of other married Folks, the said Frances Howard, in hope

hope of lawful Issue, and desirous to be made a Mother, liv'd together with the said *Robert* at Bed and Board ; and that they lay both naked and alone in the same Bed as married Folks use : And from time to time, again and again, she yielded herself to his Power, and, as much as lay in her, offer'd herself, and her Body to be known ; and earnestly desir'd Conjunction and Copulation.

5. And also the said Earl, in the same time, very often, again and again, did try to have Copulation, as with his lawful Wife, which she refus'd not, but us'd the best means she could : And notwithstanding all this, the said Earl could never carnally know her, nor have that Copulation in any sort, which the Marriage Bed alloweth.

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6. Yet before the said pretended Marriage, and since, the said Earl hath had, and hath Power and Ability of Body, to deal with other Women, and to know them carnally, and sometimes hath felt the Motions and Pricks of the Flesh carnally, and tending to carnal Copulation ; and peradventure, by a perpetual and natural Impediment, hath been hindred all the former time, and is at this present, that he can have no Copulation with the said Lady *Frances*.

7. That the said Lady *Frances* hath been and is fit and able to have Copulation with a Man, and such a one as may be carnally known ; neither hath in this Regard any Impediment.

8. Moreover, the said Lady *Frances* remaineth, and is at this present a Virgin. Also at the time of the pretended Marriage, she was unacquainted with the Earl's want of Ability, and Impediment formerly mentioned.

9. That the said Earl, long before this Suit commenced, hath very often seriously confess'd, that although he did his best Endeavour, yet he never could, nor at this time can have Copulation with the said Lady *Frances*, no not once.

10. And lastly, in regard of Womanish Modesty, the said Lady *Frances* hath concealed all the former Matters, and had purpose ever to conceal them, if she had not been forced, through false Rumours of Disobedience to the said Earl, to reveal them.

She requireth, since this pretended Marriage is but of Fact, and not in Right, it may be pronounced and adjudged as none, and of none Effect; and she may be quit and free from all Knots and Bonds of the same by your Sentence and Authority.

The ANSWER of the Earl of Essex to the abovesaid Allegations, July 5. 1614.

The Earl of
Essex's Answer.

To the first and second he answereth affirmatively.

To the third he saith, that at the time of his Marriage he thinks that he was full fourteen Years of Age, and is now twenty two and upwards; neither since hath had, or hath any Sickness or Impediment to hinder him, but that he might have had Copulation with a Woman, saving in the time of his Sickness of the Small-Pox, for two or three Years after his Marriage, which continued for a Month or six Weeks, and at another time, when he had a few Fits of an Ague.

To the fourth he affirmeth, that for one Year he divers times attempted; that the other two Years, when he was willing, she shew'd herself at sometimes willing, but other times refus'd; and he lay in Bed most commonly with her, and felt no Motions or Provocations.

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To the fifth he answereth, that he never carnally knew her, but found not any defect in himself, yet was not able to penetrate in her Womb, nor enjoy her.

To the sixth he believeth, that before and after the Marriage he hath found an Ability of Body to know any other Woman, and hath oftentimes found Motions and Provocations of the Flesh, tending to carnal Copulation: But for perpetual and natural Impediments, he knoweth not what the Words mean; but that he hath lain by the Lady Frances for two Years last past, and had no Motion to know her, and he believes never shall.

To the seventh he believeth, that the said Lady Frances is not a Woman able and fit for carnal Copulation, because he hath not found it.

To

To the eighth and ninth, he believeth them both to be true ; and thinketh, that once before some Witnesse of Credit, he did speak to this purpose ; That he oftentimes had endeavoured carnally to know her, but that he did not, nor could not.

The Midwives, appointed to make Inspection up- She is inspected.
on the Lady's Body, gave in, that the Lady Essex was a Woman apt to have Copulation, and to bring forth Children ; and that the said Lady was a Virgin, and uncorrupted.

Three Ladies depos'd, that they believed the same, for that they were present when the Midwives made this Inspection, and found them give good Reasons for it.

However, the Archbishop was entirely against a Divorce, alledging, the Scripture was to determine all Controversies appertaining to the Church ; that Marriage among Christians ought to be deemed a sacred thing ; and that there was no Text of Scripture that could warrant the making a Marriage null, for an Impediment or Impotency towards a particular Woman, where the Man was capable as to others. And that none of the antient Fathers, either among the *Greeks* or *Latins*, ever mention'd such a Case. That *Maleficium versus hanc*, was never heard of, till *Hircanus Rhemifis Episcopus*, who liv'd four hundred Years after Christ : And he conceiv'd this to be a Concomitant of Popish Superstition, which about that time grew to so great an Height ; and that it was strange that there should be but one Man in our Age troubled with this unaccountable Impediment. The Archbp's Reasons against a Divorce.

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Then the Archbishop cited the Opinions of *Philip Melancthon*, and others, in Cases of Divorce and Impotency.

King JAMES's Answer to the Archbishop's Reasons.

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To the first ; That the Scripture doth directly, or by The King answers them.
Consequence, contain sufficient Matter to decide all Controversies, especially in this appertaining to the Church.

This, in his Opinion, was preposterous, and one of the Puritans Arguments, without a better Distinction or Explanation. For the Orthodox Proposition was, that the Scripture doth directly, or by Consequence, contain in it sufficient Matter to decide all Controversies in *Points of Faith and Salvation*; of which sort a Nullity of Marriage could not be accounted for one; and therefore his Consequence upon the former Proposition must fail.

That there was no more occasion for an express Warrant in Scripture to declare a Nullity of Marriage in this Case than in any other; and that Christ does not directly say, that such or such a Marriage shall be nullified; or teach us what Form or Process shall be us'd in it; or make mention of the Triennial Probation, any more than he forbids Marriage in the fourth Degree, without Leave obtain'd of the Bishop of the Diocess: And that it was sufficient in this Case that we are taught out of the Word of God, that Marriage is *Nulla sine Copulatione*: And whether the Impediment be universal, or *versus hanc* only; or whether it was born with him, or proceeded from some Violence, or Disease, or happen by Disproportion or Inaptitude of the Parties, the Case was the same, and such Nullities were grounded upon the aforesaid Warrant of Scripture.

That as to the Fathers making no mention of an Impediment *versus hanc*, it was to be remembered, that in the first Ages, during the Times of Persecution, and before the Empire became Christian, the Church did not meddle with any thing, which drew a Consequence after it of Possessions, or Inheritances, as Marriage doth: And even for several hundred Years after the Conversion of the Emperors, the Judgment and Decision of all such Questions did still remain in *Foro Civili*, till the Popedom began to grow great, and assume, or rather usurp a supreme and independant Jurisdiction in all Ecclesiastical Causes: And therefore the Fathers and Councils had no occasion to mention what did not come before them in those Times.

But

But his Majesty not being able to assign any natural Cause for this partial Impediment, or *Maleficium versus hanc*, surmises, that it might have been brought about by Witchcraft, or the Power of the Devil. But it may still remain a Doubt, whether in fact there ever was such a Case: And as to this in particular, the following Tryals sufficiently evince the ill Arts that were used to abuse his Majesty and the Court of Delegates, in order to obtain a Divorce. However, according to his Majesty's Opinion, Sentence was given for annulling the Marriage; and both Parties left at liberty to marry again.

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The Sentence
of Divorce.

The Commissioners who were for the Divorce, were Winchester, Ely, Litchfield and Coventry, and Rochester, Bishops; Sir Julius Caesar, Sir Thomas Parrey, and Sir Daniel Donne, Doctors.

The Commissioners who dissented, were the Archbishop of Canterbury, Bishop of London, Sir John Bennet, Francis James, and Thomas Edwards, Doctors.

The Tryal of RICHARD WESTON, at Guildhall, London, for the Murder of Sir Thomas Overbury, before the Lord Mayor, the Lord Chief Justice, and the Justices Crook, Daudridge, and Haughton, and other Commissioners, the Day of November, 13 Jac. I. 1615.

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THE Indictment set forth, " That Richard Weston, aged 60 Years, not having the fear of God before his Eyes, &c. did devise and contrive, not only to bring upon the Body of Sir Thomas Overbury great Sickness and Diseases, but also to deprive him of his Life; and that to effect the same, he did on the Ninth of May, in the Eleventh Year of King James, at the Tower of London, in the Parish of Allhollows-Barkin, procure a certain Poison, of a green and yellow Colour,

Page 235.
The Indictment
for Murder, in
administering
Poison to Sir
Thomas four se-
veral Times.

“ Colour, call’d Rosalgar (knowing the same to be
 “ deadly Poison) and the same did maliciously
 “ mingle and compound in Broth, and the said
 “ Broth so infected and poisoned, did deliver to
 “ the said Sir *Thomas Overbury*, as wholsom Broth,
 “ to the intent to kill and poison the said Sir *Thomas*,
 “ which Broth the said Sir *Thomas* did take and
 “ eat. And that upon the First of *July*, in the
 “ Year aforesaid, he did procure another Poison,
 “ call’d white Arsenick (and knowing the same to
 “ be deadly Poison) did give unto the said Sir
 “ *Thomas Overbury*, as good and wholsom to eat;
 “ and that he did take and eat it. And that on the
 “ 19th of the same Month of *July*, he did procure
 “ another Poison, call’d Mercury Sublimate, and
 “ knowing the same to be mortal Poison, did put
 “ and mingle in Tarts and Jellies, and gave them
 “ to the said Sir *Thomas*, as good and wholsom
 “ Meat, who did eat the same. And that after-
 “ wards the said *Weston*, with one who
 “ was an Apothecary, upon the 14th of *September*,
 “ in the Year aforesaid, did procure more of the
 “ said Poison, call’d Mercury Sublimate, and know-
 “ ing it to be deadly Poison, did mingle the same
 “ in a Clyster; and that the said *Weston* and the
 “ said Apothecary, for a Reward of twenty Pounds
 “ promised him, did infuse and administer the said
 “ Clyster as good and wholsom, to the Guts of
 “ the said Sir *Thomas*; and that as well immedi-
 “ ately after the taking of the said poison’d Meats,
 “ as of the said Clyster, the said Sir *Thomas* did
 “ languish and fall into Diseases and Distempers;
 “ and that on the Day of he died,
 “ being so poison’d and murder’d by the said *Richard*
 “ *Weston* as aforesaid.

The Prisoner
 refuses to be
 try’d by a
 Jury.

To which Indictment the Prisoner pleaded *Not*
Guilty, but being ask’d how he would be try’d, he
 said he would be try’d by God; and would not be
 persuaded to say by God and his Country, as the
 Law prescribes; whereupon the Court acquainted
 him, if he refused to take his Tryal in the Manner
 the Law directed, he must undergo the Punishment
 call’d *Peine fort & dure* for his Contempt. And the
 Lord

Lord Chief Justice declar'd that he was of Opinion he had been dealt with by some great Men to stand mute, who were accessary to the Fact, that they might escape Punishment.

And the Lord Chief Justice directed Sir *Laurence Hide*, the Queen's Attorney General, to open the Evidence, notwithstanding the Prisoner refused to put himself upon his Tryal, that this villanous Practice might be laid open to the World, and those great Persons, who had abetted and countenanc'd the Fact, expos'd. Which Mr. Attorney General having done, the Confessions of the Prisoners, and others concern'd in this barbarous Murder, were read.

Sir Edward Coke Lord Chief Justice.

And then the Court adjourn'd till the *Monday* following, without giving Judgment against him, of *Peine fort & dure*, for his Contempt in refusing to put himself upon his Tryal by his Country.

The Court adjourn.

On *Monday* the 23d of *November*, 1615, the Court being met, and the Clerk of the Crown demanding of the Prisoner how he would be try'd, he answer'd, by God and his Country; whereupon a Jury was sworn, and charg'd with the Prisoner; and after the Queen's Attorney General had again open'd the nature and course of the Evidence, my Lord Chief Justice told the Jury, That altho' the poisoning, laid in the Indictment, were said to be with *Rosalgar*, *White Arsenick*, and *Mercury Sublimate*, yet they were not to expect precise Proofs in those Points; and as where a Man is indicted for murdering another with a Dagger, and it appear upon the Evidence to be done with a Sword, or with a Staff, it was not material, so as the Jury find the Murder; so in this Case, if they were satisfied of the poisoning, it was not material with what he was poisoned.

He is persuaded to put himself upon his Tryal.

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Sufficient to find the Party poison'd, without finding it to be in the manner laid in the Indictment.

Then they proceeded to exhibit the Proofs, and first the Examination of *Laurence Davies*, Servant to *Sir Thomas Overbury*, was read, viz.

That the Examinant had serv'd *Sir Thomas Overbury* eight or nine Years, in all which Time he was very healthful, and had never kept his Bed for any Sickness; but that he was sometimes troubled with the Spleen, for which he had an Issue made; but be-

Page 237. Several Examinations read as Evidence against the Prisoner.

before his Imprisonment he had no Sores, Blisters, or other Defects, in his Body.

And he farther depos'd, That Sir *Thomas* would have undertaken his Embassage, but was dissuaded by *Somerſet*, who promis'd to bear him out. That he complain'd he need not be a Prisoner if *Somerſet* would; and that if he died, his Blood would be requir'd at his Hands.

That *Somerſet* was as good as his Word, who told the Examinant at *New-market*, he would be even with Sir *Thomas Overbury*.

Another Examination of *Laurence Davies* was read.

That *Weston* delivered the Examinant a Letter from Sir *Thomas Overbury* to *Rochester*; importing, That he would do his Endeavour, in being a means of Friendship between *Rochester* and some others; but as for his Marriage with the Countess of *Essex*, he would never give his Consent. And that the Examinant brought a Letter from *Rochester* to Sir *Thomas Overbury*, and deliver'd it to *Weston*, and a Paper of White-Powder fell out, which *Rochester* perswaded Sir *Thomas* to eat, and not to fear, tho' it made him sick, for that would be a means of procuring his Enlargement; so they put the Powder into the Letter again: And he saith he saw some of the Powder in *Weston's* Hands, after the Death of Sir *Thomas Overbury*.

The Examination of *Henry Payton*, another Servant of Sir *Thomas's*.

He saith, That Sir *Thomas* was of a good Constitution, used Exercise and a moderate Diet; and never had any Sores, save an Issue in one Arm.

That Sir *Thomas* wrote Letters to *Somerſet*, importing, That he need not lie in Prison if he would, and if he died, his Blood would be required at his Hands.

That Sir *Thomas*, at one a Clock, one Night, meeting *Somerſet* in the Gallery at *White-hall*, had some Discourse with him about the Countess, whom he call'd a base Woman; and told *Somerſet* he would blast all the King's Favours; and the Dispute growing high, Sir *Thomas* desir'd *Somerſet* he might

might have his Portion due, and he would shift for himself. To which *Somerset* answer'd, *My Legs are strait enough to carry me*, and flung away in Anger. All which this Examinant heard, being in a Chamber next the Gallery.

Sir *Dudley Diggs* depos'd (being present in Court) That he was sent by a Privy Counsellor (a great Man) to Sir *Thomas Overbury*, to bring him to this great Man, which he did, and coming back together over the Water, Sir *Thomas* was discontented, and said he was perswaded by the great Man to withdraw himself from the Court, for some Reasons which he did not disclose. And that afterwards Sir *Dudley* being sent by the Lords, to know the Resolution of Sir *Thomas*, concerning the Embassage, he found that he rely'd on the Lord *Somerset*, saying, *My precious Chief knows the King's Mind better than any, and I the Mind of my precious Chief.*

Several Examinations of the Prisoner *Richard Weston* were read.

This Examinant saith, That before Sir *Thomas Overbury* was in the Tower, he carried three Letters to *Somerset* from the Lady *Effex*, to *Royston*, *Newmarket*, and *Hampton-Court*, and delivered the Answers to Mrs. *Turner*. That upon the Letter to *Hampton-Court*, he had an Answer only by Word of Mouth, That his Lordship would come; and that coming back he met the Countess and Mrs. *Turner* half way in a Coach, and told the Countess what the Lord said; whereupon she went to a Farmer's House hard by, whither soon after *Somerset* came: And that afterwards they met in the Night at Mrs. *Turner's* House in *Pater-noster-row*. And that a Year before Sir *Thomas's* Imprisonment, no Body carried Letters between them but himself.

The Prisoner's own Examination read against him.

At another Examination *Weston* declared, That he shew'd the Glass that was deliver'd him by his Son, from the Countess, to the Lieutenant of the Tower, and told him it came from the Countess of *Effex*; and that the Lieutenant perswaded him not to give it Sir *Thomas*.

That he receiv'd several Tarts from the Countess to give Sir *Thomas*, with a Caution that he should not

not taste them himself ; and that he believ'd they were poison'd.

That Mrs. *Turner* appointed him to come to *White-ball*, and perswaded him to give Sir *Thomas* a Water, and said he must not drink of it himself ; and promis'd him a great Reward ; and that he suspected it was Poison. That his Son afterwards brought him the Glass, which he shew'd the Lieutenant, who rebuk'd him, and thereupon he set it by, and did not give it him, tho' he told Mrs. *Turner* next Day he had given it Sir *Thomas*, and he vomited often, and was very sick.

That Mrs. *James* and Mrs. *Rawlins*, Servants to the Countess, came often to enquire how Sir *Thomas* did, and what he would eat, and they brought him Jellies and Tarts, which he gave Sir *Thomas*, who eat of them.

That demanding his Reward of Mrs. *Turner*, she said he was to have no Reward till Sir *Thomas* was dead ; and that he was promis'd a Pursuivant's Place. And confesses, that after Sir *Thomas* was dead, he receiv'd, at twice of the Countess, by Mrs. *Turner*'s Hands, 180 Pounds, as a Reward.

At another Examination he confess'd, That Sir *Thomas* had a Clyster which gave him sixty Stools and a Vomit ; and the Examination of Sir *Jervis Elvis* being shewn him, he confess'd the same to be true.

At another Examination the Prisoner confess'd, That the Day after he was prefer'd to the Tower, he had the keeping of Sir *Thomas Overbury*, and soon after receiv'd a Glass, by his Son, from the Countess ; and that the Lieutenant also told him all the Tarts came from her ; and he confess'd that the Countess directed him to give them to Sir *Thomas Overbury*.

At another Examination the Prisoner *Weston* depos'd, That he was prefer'd to the keeping of Sir *Thomas Overbury*, by Mrs. *Turner*, upon the Request of Sir *Thomas Monson*, to the Lieutenant ; and that Mrs. *Turner* told him, if he would give Sir *Thomas Overbury* a Water, which the Countess would send him, he should be well rewarded.

Sir

Sir *Thomas Monson's* Examination read.

He confess'd he recommended *Weston* to the Lieutenant of the Tower, to be Keeper of Sir *Thomas Overbury*, at the Request of the Countess.

The Examination of *Anne Turner*, Widow, read.

She saith, That *Weston* was an ancient Servant of her Husband's, but denies she had any thing to do in the placing him in the Tower; and says he made use of Sir *Thomas Monson* to effect it.

Several Examinations of Sir *Jervis Elvis* read.

He confess'd he receiv'd a Letter from Sir *Thomas Monson*, desiring that *Weston* might be Sir *Thomas Overbury's* Keeper; and that Sir *Thomas Monson* told this Examinant afterwards, that his Keeper should not suffer any Letters or Tokens, or any thing to be deliver'd to him.

At another Examination before the King, Sir *Jervis* confess'd, That he met *Weston* carrying Sir *Thomas's* Supper in one Hand, and the Glas in the other; and that *Weston* said to him, Sir, shall I give it him now? and the Examinant enquiring what, *Weston* said, Why, Sir, know you not what is to be done? and acquainting him with the Matter, the Examinant dissuaded him from it, and he seem'd to be resolv'd not to do it; and that afterwards *Weston* confess'd to him, that an Apothecary had 20 Pounds for giving a Clyster to Sir *Thomas Overbury*, which destroy'd him.

At another Examination Sir *Jervis* confess'd, That after the Death of Sir *Thomas Overbury*, *Weston* complain'd he was neglected by the Countess, and could receive no Reward; but afterwards said he had receiv'd 100 Pounds, and should have more. And this Examinant saith, That Sir *Thomas* was angry with the Apothecary about the Vomits he gave him, and complain'd of the Tarts and Jellies, that they were ill-colour'd after a Day or two standing, and that no Body eat of them but Sir *Thomas*.

At another Examination the Lieutenant said, That upon conferring with his Servants, he found that *Weston* came to the Tower the next Day after the Examinant had the Possession of it.

The

The Examination of *William Weston*, Son to the Prisoner, was read.

He confess'd that he receiv'd a Glass from the Countess, by a Servant, two Inches long, and wrap'd in Paper, which he deliver'd to his Father in the Tower.

The Examination of *Simon Marson*, Musician.

He says, That he serv'd Sir *Thomas Monson* six Years, who prefer'd him to the King's Service; but that he sometimes waits on Sir *Thomas Monson* still: And that he receiv'd some Tarts and Jellies from the Countess of *Essex*, to be carried to the Lieutenant of the Tower for Sir *Thomas Overbury*.

Paul de la Bell's Examination.

He saith, That on the third of *July* he made a Bath (by Dr. *Micham's* Advice) to cool him; and he observ'd his Body to be very fair and clear: And he saw it again, after Sir *Thomas* was dead, full of Blisters, and so consum'd, as he had never seen the like.

George Rawlins, a Kinsman of Sir *Thomas's*, examin'd.

Evidence of Sir
Thomas's close
Confinement.

He saith, That on the Report that Sir *Thomas* was murder'd, he petition'd the King that it might be examin'd at Law; and denies that he was persuaded to the contrary. He saith, that he came often to the Tower to see Sir *Thomas*; but was not suffer'd to see him so much as out at the Windows; and that *Weston* told him, that was the Order of the Council and of the Lieutenant.

The Examination of Sir *David Wood* read.

He saith, The King having granted a Suit he had petition'd for, which would have been worth 2200 Pounds to him, he was oppos'd by the Lord *Rochester* and Sir *Thomas Overbury*, and could have no Benefit of it, unless he would give *Rochester* 1200 Pounds; and that he had determin'd to cane Sir *Thomas*: And that the Lady *Essex* sent for this Examinant, and told him she heard he had receiv'd much Wrong from Sir *Thomas Overbury*, and that he was a Gentleman and could revenge himself; and that Sir *Thomas* had much wrong'd her. This Examinant told her, that Sir *Thomas* had refused him the Field: And she persuaded the Examinant to
kill

The Countess
of *Essex's* En-
deavours to get
Sir *Thomas*
Overbury mur-
der'd.

kill him, and he should have 1000 Pounds Reward, and Protection from his Enemies ; which he refused, saying, he should be loth to hazard going to *Tyburn* upon a Woman's Word : But the Lady *Essex* still persisted he might do it easily, as Sir *Thomas* return'd late home from Sir *Charles Wilmot's* in his Coach.

William Goare, one of the Sheriffs of *London*, was examin'd.

He saith, he often perswaded *Weston* to put himself upon his Tryal, while he was in his Custody ; and *Weston* answer'd, he hop'd he would not make a Net to catch little Birds, and let the Great ones go.

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Mr. *Warr* having made some Observations on the Evidence, and shewn with what Malice this Murder had been prosecuted, occasion'd by Sir *Thomas's* being an Obstacle to the Amours of some great People, takes notice that the Poison came from Court, from whence People usually expect Safety and Protection.

It was demanded of *Weston* what he had to say for himself, who, notwithstanding his former Confessions, began to excuse himself, alledging his Ignorance in the Matter : He acknowledg'd, indeed, that he receiv'd the Glass, and thought it was not good, but denied he ever gave it to Sir *Thomas*. And it being demanded why he had formerly accused one *Franklin*, of bringing him the said Glass from the Countess, he said he did it to save his Child ; but producing no Proofs, and being able to say little in his Defence, the Jury withdrew, and after a short recess, return'd with their Verdict, That the Prisoner *Weston* was guilty of the felonious murdering and poisoning Sir *Thomas Overbury*.

The Prisoner excuses himself, that he did not know the Things he gave Sir *Thomas* were poison'd.

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He is convicted.

The Lord Chief Justice, in his Speech before Sentence, took notice, that between the first Arraignment of the Prisoner and his Tryal, the King had sent the Bishops of *London* and *Ely* to him, to perswade him to put himself upon his Tryal ; and that his Majesty was determin'd to see Justice executed upon the Offenders.

Then Sentence was pronounc'd as usual for Murder. Sentence pass'd.

The

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*The Tryal of Mrs. ANNE TURNER;
Widow, an Accomplice in the Murder of
Sir Thomas Overbury, the Day of
November, 1615.*

Mrs. *Turner* indicted as accessory before the Fact to this Murder.

The Lord Chief Justice orders her Hat to be taken off at her Arraignment.

She and the Countess of *Essex* resort to a Conjuror.

SHE was indicted for comforting, aiding and assisting the aforesaid *Richard Weston*, in the poisoning and murdering *Sir Thomas Overbury*.

Sir Edward Coke, the Lord Chief Justice, order'd her Hat to be taken off; and said, that Women might be cover'd in the Church, but not when they were arraign'd.

Sir Laurence Hide, the Queen's Attorney, open'd the Indictment, and shew'd the foulness of the Crime, and gave an account of the Countess of *Essex's*, and Mrs. *Turner's* Practices with one Dr. *Forman* of *Lambeth*, lately dead. He acquainted the Court, that the Lady *Essex* and Mrs. *Turner* us'd to call this Doctor Father, and often resorted to him; and their Business was to get the Doctor, by his Skill in Magick, to procure the Earl of *Somerset* (then Viscount *Rocheſter*) to love the Countess, and *Sir Arthur Manwaring* to love Mrs. *Turner*, by whom it was reported she had several Children. And Mr. Attorney exhibited two Letters in Court, which the Countess had written about this Business, one to Mrs. *Turner*, and the other to Dr. *Forman*.

A Letter of the Countess's to Mrs. *Turner* read in Evidence against her.

In the Countess's Letter to Mrs. *Turner*, she tells her, "She is out of hopes of any Good in this World; for her Father, her Mother, and Brother, said she must be with him [her Husband] and what was worst of all, her Lord had complain'd that he had not lain with her, and she would not suffer him to use her, and her Father and Mother were angry; but she had rather die a thousand times, for besides what she should suffer, she should lose the Others Love if she lay with him, and could never desire to see his Face if she did. That her Lord was as well as ever;

“ever; so she might see in what a miserable Con-
 “dition she was. That she should send the Party
 “word of all. He had sent her word all would be
 “well, indeed, but she should not be so happy as
 “to have the Lord love her. That as she had taken
 “Pains for her all this while, so now she desires
 “she would do all she could, for she should not be
 “happy so long as that Man liv’d. And that if she
 “could get this done, she should have as much
 “Money as she could demand.

A Letter from the Countess to Dr. *Forman*, pro-
 duc’d in Evidence.

Sweet Father,

“I Must still crave your Love, altho’ I hope I
 “have it, and shall deserve it better here-
 “after: Remember the Galls, for I fear, tho’ I
 “have yet no Cause but to be confident in you,
 “yet I desire to have it, as it is yet remaining well,
 “so continue it still, if it be possible; and if you
 “can, you must send me some good Fortune; Alas,
 “I have need of it. Keep the Lord still to me,
 “for that I desire, and be careful you name me
 “not to any Body, for we have so many Spies, that
 “you must use all your Wits, and all little enough,
 “for the World is against me, and the Heavens
 “favour me not, only happy in your Love; I hope
 “you will do me good, and if I be ungrateful, let
 “all Mischief come unto me. My Lord is lusty
 “and merry, and drinks with his Men; and all the
 “Content he gives me, is to abuse me, and use me
 “as doggedly as before: I think I shall never be
 “happy in this World, because he hinders my
 “Good, and will ever, I think so. Remember, I
 “beg for God’s sake, and get me from this vile
 “Place.

The Countess’s
 Letter to the
 Conjuror.

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“Your affectionate Daughter,

“*Frances Essex.*

“Give *Turner* warning of all Things, but not
 “the Lord. I would not have any thing come out,
 “for fear of the Lord Treasurer, for so they may

“ tell my Father and Mother, and fill their Ears
“ full of Toys.

Several Pictures and enchanting Papers were produc'd in Court, that were found in Mrs. *Turner's* Custody : At the shewing of these, the Scaffolds in the Hall gave a great Crack, and put the Audience in some Consternation, imagining the Devil was coming amongst them.

Doctor *Forman's* Widow also produc'd several Letters and Pictures which she found in her Husband's Study, relating to this Business ; and being sworn, she depos'd,

That Mrs. *Turner* and her Husband were sometimes lock'd up together three or four Hours in his Study ; and that upon his Death, Mrs. *Turner* sent *Margaret*, her Maid, to Mrs. *Forman*, desiring that all such Letters and Papers, as concern'd the Earl of *Somerset*, or the Countess of *Essex*, or any other great Persons, should be burnt, for that the Council would send a Warrant to search the Study ; and that Mrs. *Turner* and her Maid, with the Deponent's Consent, burnt several Letters and Papers ; but the Deponent kept some without their Privity.

Several Devils
invok'd to procure
them the
Love of their
Gallants.

In some of the Parchments were the Names of the particular Devils, who were conjur'd to torment the Lord *Somerset* and Sir *Arthur Manwaring*, if their Loves should not continue to the Countess and Mrs. *Turner*.

Mrs. *Turner*, the Prisoner, also confess'd, that they had made use of Dr. *Savory* after Dr. *Forman's* Death, and had practis'd many Sorceries upon the Earl of *Essex's* Person.

Several Witnesses depos'd, that one *Franklin*, an Apothecary and Druggist, provided all the Poisons that were given to Sir *Thomas Overbury* ; and that *Franklin* had said the Lady *Essex* was a great Friend of his, and allow'd him 2 s. 6 d. a Day for his Boat-hire, and 10 s. a Week, and he could have what Money he would ; and that when the Deponent reply'd, *But Cousin, how can God bless you in this Business ?* *Franklin* answer'd, *Let them talk of God that have to do with him, my Lord of Somerset and the Countess will bear me out in any thing I do ;* and if the Deponent
had

had any Suit to make, he would warrant it should be granted.

Then the Examinations were read that were produc'd at *Weston's* Tryal; and the Prisoner understanding, by the Proceedings, that *Weston* was executed, of which she was ignorant till now, having been kept close Prisoner in the Sheriff's House, she was so dejected, that she said little or nothing in her Defence.

The Lord Chief Justice, in his Directions to the Jury, told them, That *Weston* had confess'd at last, that all he had said at his Examinations was true:

The Lord Chief Justice directs the Jury.

That the King was exceedingly griev'd that *Somerset* should make use of his Favour to perpetrate so foul a Fact. That he was the Occasion of Sir *Thomas's* being appointed for the Embassy to *Russia*, and then made him refuse it, to give Occasion for his Commitment; and that while he flatter'd him with Promises of obtaining his Liberty, he gave Orders to the Lieutenant of the Tower to keep him close Prisoner, and let none of his Friends come at him; but at the same time he was open to all his Enemies. He told the Prisoner, that she had the seven deadly Sins, viz. Whore, Baud, Sorcerer, Witch, Papist, Felon, and Murderer: And was the Daughter of that Devil *Forman*; and exhorted her to repent, and pray to God to cast those seven Devils out of her.

Observes the Treachery of the Earl of *Somerset* to his Friend Sir *Thomas*.

She desir'd the Lord Chief Justice to be good to her, and said she was always brought up with the Countess, and had been a long time her Servant, but denied that she knew there was Poison in any of those Things that were sent to Sir *Thomas Overbury*.

Then the Jury withdrew, and in a short time brought the Prisoner in Guilty.

She is convicted.

And Judge *Crook*, after he had made a short Speech, pronounc'd Sentence upon her.

And Judgment given.

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The Tryal of Sir JERVIS ELVIS, another of the Accomplices in the Murder of Sir Thomas Overbury, the Day of November, 1615.

Sir Jervis Elvis indicted as Accessary before the Fact to the Murder of Sir Thomas.

HE was indicted also as Accessary before the Fact, for the malicious aiding, comforting and abetting of *Weston* in the Murder of Sir Thomas Overbury.

And particularly it was charg'd upon him, That meeting *Weston* with the Vial of Poison in one Hand, and the Broth in the other, and *Weston* saying, Sir, *shall I give it him now?* he reprov'd him indeed then, but suffer'd it to be given him that Night in his Broth, & *qui non propulsat injuriam cum possit, infert.* And after he knew this to be Poison, he kept *Weston* still and countenanc'd him; and one time sent him a Cup of Sack, and bid his Man tell him he lov'd him as well as ever he did: That all the time he paid *Weston* no Wages, and as soon as Overbury died, *Weston* was remov'd.

That the Countess wrote a Letter to the Prisoner, and with the Letter sent poison'd Tarts for Overbury, and Wine for the Lieutenant's Wife, with Caution not to taste the Tarts themselves.

Three Letters from the Lord Northampton to my Lord Rochester, read in evidence against him.

And three Letters from the Earl of Northampton to Rochester were read.

In the First, he tells the Lord Rochester, he had spent two Hours the Day before in prompting the Lieutenant, with Cautions and Considerations how he should act his Part in the Adventure.

The Second tells him of the Care the Lieutenant took of his Charge.

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And the Third, That Overbury's Body being view'd, there was found in his Arm an Issue, and on his Belly twelve Kernels likely to break, each as big as a Six-pence, another Issue on his Back, with a tawny Plaister upon it; That it was a dismal Spectacle, and the Corps stunk so intolerably, they were forc'd to cast it into the Coffin with a loose Sheet over it; He said God was gracious, in cutting off all

all Instruments from the factious Crew; and that if he had come out, they would have made use of him.

Another Letter from Sir *Jervis Elvis* to the Earl of *Northampton*; Wherein he undertakes to keep Sir *Thomas Overbury* according to his Instructions; and says, that as soon as Sir *Thomas* came thither, he protested his Innocence, and asked him what they intended to do with him; and he answer'd, they intended to refine him, that his Purity might appear the better: And that he walked with Sir *Thomas* in his Chamber, and advised him to give way to the Match between *Rocheſter* and the Countess: That he grew hot against the Lord *Northampton* and the Countess of *Suffolk*, saying, if he were the Countess of *Suffolk*'s Prisoner, as he thought he was, the Lieutenant might let her know, that he car'd as little to die, as she to be cruel, so that he found the Countess of *Suffolk* was engag'd in the Plot with them, tho' the Lord Chamberlain knew nothing of it, nor any one else. But *Rocheſter*'s Part he much fear'd, till he saw the Event.

Jervis Elvis.

To the abovesaid Charge Sir *Jervis Elvis*, the Prisoner, answer'd, That when *Weston* asked him the Question, *Shall I give it him now?* he saw no Poison in his Hand; and that there was a great difference between his asking, shall I give it him now, and shall I give him *this* now: And that when *Weston* had told him it was Poison he meant to give, he reprov'd him, and threaten'd him for it, which could not be call'd abetting of him; and that if he afterwards gave him some Encouragement, it was because he found he was resolv'd against the doing it, and seem'd to abhor the Fact.

Sir *Jervis Elvis*'s Defence.

That he never knew any other meaning of the Countess's Letters, but the bear literal meaning; and that when the Tarts turn'd of such strange Colours as they stood in his Kitchen, he order'd his Cook to throw them away, and make other Tarts and Jellies for him.

That the Earl of *Northampton*'s Letter to him, only concern'd the keeping Sir *Thomas Overbury* under a close Restraint, that he might agree to their Purposes, concerning the Match between *Rocheſter*

He says, the Reason of confining Sir *Thomas* so close, was to induce him to consent to the Match; and he forbade *Weston* giving him the Poison.

and the Countess ; and that there was nothing about poisoning him in them ; and if the Earl of Northampton was in any such Plot, he was not of his Council, or had any Knowledge therein.

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Being ask'd what he meant by those Words of Rochester's Part, *I shall greatly Fear until I see the Event* : He said he meant nothing by them against Overbury's Life ; but being a Stranger to Rochester, and having heard of their great Friendships, he might well fear whether Rochester would always countenance those Projects for Overbury's Restraint.

He said, if he had been concern'd in the Murder, he should not have made that voluntary Discovery, and accused Weston : And that Weston had declar'd before the Chancellor of the Exchequer, on his Examination, that he believ'd the Lieutenant knew nothing of it, though indeed he did think that those who set him on Work had acquainted him with their Plot, when he us'd those Words, *Shall I give it him now* ? That what he knew of the Poisoning of Sir Thomas was by Weston's Relation after Sir Thomas's Death, though he were indicted as Accessary before the Fact.

That he knew no other Guilt than the gross Error of his Judgment, that he did not take effectual Care to prevent it, when he saw there was such a Design.

He urges that the concealing his Suspicion of an Intent to poison could not make him Accessary.

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And then he put this Case ; If one knoweth not of a Plot to poison another, but only suspects it, and is no Actor or Contriver, whether such a one be Accessary to the Murder. And if any Man could charge him in direct Terms, that he was an Abettor : Or if the Court thought that such Concealing, without Malice, was an abetting, then he would acknowledge himself guilty.

The Chief-Justice ask'd him, why he desir'd Sir Thomas's Man to put up his best Hangings in his Chamber two Days before he died, which he knew were to be his Fees ? And he said, to leave him without Excuse, the Confession of Franklin should be read, who, not knowing of Sir Jervis's Tryal, came to him that Morning at five a Clock, and said he was much troubled in his Conscience, and could not sleep till he had made his Confession.

The

The Confession of James Franklin, Novem. 16. 1615.

He confels'd, That Mrs. Turner came to him from the Countess, and desired him to get the strongest Poisons he could for Sir Thomas: That he bought seven Sorts accordingly, which were given to Sir Thomas Overbury at several times; and that the Lieutenant knew of them, as appear'd by several Letters he had written to the Countess, which this Deponent had seen: In one of which was this Expression; Madam, *The Scab is like the Fox, the more he is cursed, the better he fareth.*

Franklin's Confession read against him.

He deposed farther, That Sir Thomas hardly ever eat any thing but there was Poison mix'd with it. And for these Poisons the Countess sent him Rewards: That she still sent for more Poisons, and the Deponent besought her on his Knees not to use him any more in this Matter; but she would not desist; and said the Reason of her poisoning of him was, because he would pry into her Suit. That the Day the Countess was married to Somerset, she sent him twenty Pound by Mrs. Turner, and he was to have had 200*l. per Annum* during his Life.

To this Sir Jervis gave little or no Answer.

Then the Jury withdrew, and after a short Space return'd, and brought the Prisoner in guilty.

Sir Jervis convicted.

After which the Lord Chief-Justice pass'd Sentence upon him, and he was Executed at Tower-Hill.

And Sentence pass'd.

The Tryal of JAMES FRANKLIN at the King's-Bench Bar, the Day of November, 13 Jac. I. 1615. as an Accomplice in the Murder of Sir Thomas Overbury.

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HE was indicted as Accessary to Weston; and his own Confession was read in Evidence against him; (*viz.*)

Franklin indicted as Accessary.

That Mrs. Turner came to him, and desir'd him to provide a Poison that would not kill a Man presently, but lie in his Body a certain time, where-

His own Confession read against him.

with he might languish by little and little ; and that she gave him four Angels, with which he bought a Water call'd *Aqua Fortis*, and she try'd it upon a Cat, which languish'd and cry'd pitifully for two Days, and then died. Then Mrs. Turner sent for him to come to the Countess, who told him that *Aqua Fortis* was too strong, and propos'd Arsenick, which the Examinant said was too violent : Then she propos'd Powder of Diamonds ; which, he said, he did not know the Nature of ; then she said he was a Fool, and gave him some Gold, and bid him buy that Powder for her. And that on the Examinant's enquiring why she would poison Sir Thomas, she said, he would pry so far into their Concerns that he would undo them all : That a little before Sir Thomas's Death, the Countess sent for him, and shewed him a Letter written from my Lord Rochester, wherein he read these Words ; *I marvel at these Delays that the Business is not yet dispatch'd* ; by which this Examinant believes was meant the Poisoning of Sir Thomas Overbury. And in another Letter my Lord Rochester said, Sir Thomas was to come out of the Tower within two Days, and they should be all undone ; whereupon the Countess sent for Weston, and was very angry with him, that he had not dispatch'd Sir Thomas Overbury : And Weston said, he had given him a thing that would have killed twenty Men.

That a Fortnight after Weston's Apprehension the Countess sent for this Examinant, and told him, Weston had been sent for by a Pursuivant, and had confess'd all, and they should all be hang'd : But on your Life, says she, don't confess you brought me or Mrs. Turner any Poison ; for if you do, you shall be hang'd ; I won't hang for you : And said, the Lord that was to examine him would promise him a Pardon to confess, but bid him not believe him ; for they would hang him when he had done.

That Weston came to Franklin's House, and told him now the Countess's Turn was served, she us'd him unkindly, and they should be poison'd, and that two were set to poison them,

It being demanded of the Prisoner what he had to say in his Defence: He said, it was true he did buy those Poisons; but protested his Ignorance, what they meant to do with them.

The Jury withdrew, and soon after brought the Prisoner in Guilty, and Mr. Justice *Crook* pronounc'd Sentence upon him. He is convicted, and sentenc'd.

The Tryal of the Lady FRANCES, Countess of Somerset, for the Murder of Sir Tho. Overbury, May 24. 1616.

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AFTER Proclamation for Silence the Commission was read, bearing Date the ninth of May.

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Then a Certificate sign'd by the four Judges of the *King's-Bench*, that *Weston* had been convicted as Principal, for the Murder of *Sir Thomas Overbury*, was delivered into Court by the Lord Chief-Justice, and read.

Fanshaw, Clerk of the Crown. Frances, Countess of Somerset, hold up thy Hand; (which she did.) Then the Indictment was read; which was for being Accessary before the Fact to the wilful Poisoning and Murder of *Sir Thomas Overbury*. Indicted as Accessary before the Fact to the Murder of Sir Tho. Overbury.

To which Indictment she pleaded Guilty. Pleads Guilty.

Then the Attorney-General said, That he was glad to hear this Lady had made a free Confession; which discovered her Humility and Repentance; and that she remain'd a Spectacle of much Commiseration. He observ'd, that this was the second time, since the King came to the Throne, that any Peer had been arraign'd (being the Space of thirteen Years.) That the first were *Grey* and *Cobham*, who, though they were convicted, were not executed; so that no Noble Blood had yet been spilt in his Majesty's Reign — Then he proceeds to give an Account of the Discovery of this Murder, and what had been done upon it. *Overbury*, (says he,) died poisoned the 15th of September 1613, in the Tower of London. He was no sooner dead, but there was a Rumour, that *Overbury* came strangely by

No Nobleman executed in this Reign hitherto.

How strangely
this Murder was
discovered after
two Years Con-
cealment.

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by his End. And on the contrary, there was another Report, that he died of a very foul Disease. That although it were two Years since, God had so infatuated the two great Procurers, and their Instruments, that the first took no Care about it, and the others fled not. And as Murders were often strange in their Discovery, so this was miraculous; for it came out in a Compliment thus: My Lord of *Shrewsbury* having recommended Sir *Fervis Elvis* to a certain Counsellor of State, whom Sir *Fervis* had desired to be made known to; the Counsellor answer'd, that he took it as a Favour from him; but added withal, that there lay a kind of heavy Imputation on him about *Overbury's* Death, and he wish'd he would clear himself, and give some Satisfaction in that Point. This my Lord *Shrewsbury* related to *Elvis*, who was in some Astonishment at it, and made some kind of Discovery. He said, that indeed some Attempts had been made against Sir *Thomas Overbury*, but they came to no Effect, having been check'd by him. The Counsellor weighing this Relation of *Elvis*, acquainted the King with it; who presently commanded that *Elvis* should set down his Knowledge of this Matter in Writing; which he accordingly did, but took Care not to insert any thing that might touch himself; but rather chose to accuse others than any one else should undertake the Office and accuse him. Then the King refer'd the Matter to certain of the Council, who sifted something out of *Weston*: And the farther Enquiry into it was refer'd to my Lord *Coke*, who in this Cause shew'd great Diligence, and took two or three hundred Examinations; but when he found it might touch some great Persons, he desir'd others might be join'd with him; and accordingly the Lord Chancellor, the Lord Steward, and the Lord *Zouch*, were added to him: But then no Practices were left untried to suppress the Discovery; and *Weston* was solicited to stand mute; but at length the dumb Devil was cast out; and *Elvis*, *Turner*, and *Franklin*, who were Actors, tho' not Authors in this Tragedy, were brought to Trial, and convicted: And now this Lady also by her own Confession. Which might be a Means of obtaining

aining Mercy with him in whose Breast it was ; but this Day was appointed for Judgment. Before Judgment was pronounc'd, he desir'd that the King's Directions for the Examination of this Business might be read.

The KING's Instructions read.

There be two things in this Cause to be try'd, and the Verity can be but in one of them : *First*, Whether my Lord of *Somerset*, and my Lady, were the Procurers of *Overbury's* Death : Or, *2dly*, Whether this Imputation hath been practis'd by some to cast an Asperſion upon them. I would have you diligently enquire of the first : And if you find them clear, then I would have you as carefully look after the other, to the Intent such Practices may be discover'd, and not suffer'd to pass with Impunity.

The King's Instructions to those who were to enquire of *Overbury's* Murder.

Mr. *Attorney* said, there were other Directions in the Instructions, by way of Interrogatories, which were not then necessary to be read.

Then Mr. *Attorney* desir'd, that the Confession of the Countess might be recorded, and Judgment given against her : And it being demanded what she had to say why Judgment of Death should not be pronounc'd against her ; She said, she could say much to aggravate, but nothing to extenuate her Fault ; and only desir'd the Lords would intercede for her to the King for Mercy.

The Lord-Steward said, it was his part to pronounce Judgment ; but since the Lords had observ'd with what Humility and Grief she had confess'd the Fact, he did not doubt but they would become Mediators for her to the King. And then he pass'd Sentence, viz. That she should be carried back to the Tower of *London*, and from thence to the Place of Execution, where she should be hang'd by the Neck till she were dead.

Sentence pass'd upon the Countess.

The

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The Tryal of ROBERT CAR Earl of Somerset, for the Murder of Sir Thomas Overbury, 25 May, 14 Jac. I. 1616.

The Earl indicted as Accessary before the Fact to the Murder of Sir Thomas.

THE Prisoner upon his Arraignment was ordered to hold up his Hand, which he did, and the Indictment was read; which was, as against his Lady, for being Accessary before the Fact to the Poisoning and Murder of Sir Thomas Overbury.

To which Indictment he pleaded Not Guilty.

Mr. Serjeant Montague opened the Indictment, and observ'd, that it had been found by Men of Quality, seventeen Knights and Esquires of the best Repute. That the Substance of the Indictment was, " That Weston at four several times gave Sir Tho. Overbury four several Poisons: That on the ninth of May 1613, he gave him Rosalgar, carrying the Poison in one Hand, and his Broth in the other: That the second of June following, he gave him Arsenick: That the tenth of July he gave him Mercury sublimite in Tarts: And that the 14th of September following Mercury sublimite was infus'd in a Clyster and given by Weston, and an Apothecary yet unknown, which kill'd him: And that of these four several Poisons ministred by Weston, and procur'd by the Prisoner, on the fifteenth of September 1613 Overbury died."

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That the sole Question was, Whether the Earl procur'd, or caus'd Sir Thomas to be poison'd.

Then he observ'd, that there were many things in an Indictment that were only Matter of Form, and it was not to be expected that the Proof should follow that, but only what was substantial: And that the thing to be enquir'd of here was only, Whether my Lord Somerset procur'd, or caused the poisoning of Sir Thomas Overbury: And to this the Lord High-Steward, as well as Sir Edward Coke, and the rest of the Judges, assented.

Mr. Attorney opens the Evidence.

The Attorney-General, Sir Francis Bacon, opened the Evidence, and said, That the King had given them in Command not to expatiate, or make Invectives,

vestives, but materially to pursue the Evidence as it conduc'd to the Point in Question : And this, though they were glad of so good a Warrant, they should have done of themselves ; for (says he) far be it from us, by any Strains of Wit or Art, to seek to play Prizes, or to blazon our Names in Blood.

That as to the Offence the Prisoner stood charg'd with, next to High-Treason, it was the greatest and foulest Felony : It was Murder by Poison. It was Murder committed upon the King's Prisoner : And it was Murder under the Colour of Friendship.

And shews the Foulness of the Fact.

That what rendred this Crime of Poisoning so detestable was, that a Man was taken off in full Peace, thinking no harm, and while he was Comforting and Refreshing Nature with his Food ; and it was the more to be dreaded, because it was so easily committed, and hard to be prevented or discovered : Other Murders were committed *cum sonitu*, some Arts that might discover or trace the Offenders ; but this comes upon a Man when he is careless, and without Suspicion, and every Day he is within the Gates of Death. Nor does it concern only the Man against whom the Malice is intended, but it was often prepar'd for one, and taken by another ; as in the Example of 21 Hen. VIII. where the purpose was to poison one Man, and being put into the Broth, sixteen of the Bishop of Rochester's Servants were poison'd, and it went even into the Alms-Basket, and the Poor at the Gate were poison'd, which occasion'd a Statute that Year which made Poisoning High-Treason ; for it tended to dissolve Humane Society, and whatever Offence did so, was in the Nature thereof High-Treason.

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Poisoning made High-Treason in the Reign of Hen. VIII.

And that which aggravated this particular Offence was, that it was committed upon the King's Prisoner, who was out of his own Defence, and for whom the King and the State were in a manner answerable : And that Sir Thomas was the first Man that had been murdered in the Tower of London, except the two young Princes who were destroyed by Richard III.

Then Sir Francis proceeded to shew the Nature and Course of the Evidence.

He

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The Attorney
shews the
Spring and
Foundation of
all this Mischief.

He shew'd, that about a Year before *Overbury's* Imprisonment, the Earl of *Somerset* fell into an unlawful Love with the Countess of *Essex*, and purpos'd to marry her, which *Overbury*, with all his Might, impugn'd, under Pretence of Friendship, for that he accounted her an ill Woman: But that in Truth, *Overbury* had little of solid Religion or Virtue, but wholly possess'd with Ambition and Vain-Glory, was loth to have a Partner in my Lord of *Somerset's* Favour, especially one of the House of the *Howards*, to whom he had always profess'd an Averfion: And that *Overbury* had been so far from making a Scruple of Conscience of the Matter, that there was a time when he boasted he had won him the Love of the Lady by his Letters and Industry.

And that however the Tragical End of this poor Gentleman might obliterate his Faults, yet their Business at this time not consisting in Points of Civility, but to discover the Face of Truth before the Face of Justice, it was material towards the true understanding of this Cause, to know that *Overbury* was naught and corrupt.

For when *Overbury* found himself possess'd of this Lord's Favour, by whose Greatness he had promis'd himself to do Wonders, and being a Man of an unbounded and impudent Spirit, he began not only to dissuade, but to deter him from the Love of that Lady; and, supposing he had my Lord's Head under his Girdle, in respect of Communication of Secrets of State, he dealt violently with him to make him desist by Menaces of a Discovery: And from hence there flow'd two Streams of Hatred against *Overbury*; one from the Lady who was cross'd in her Love, and expos'd in her Reputation; and the other from my Lord *Somerset*, who was afraid of *Overbury's* Nature, who, if he did fly out, might trouble his whole Fortunes: To which might be added a third Stream, proceeding from the Earl of *Northampton's* Ambition, who desiring to be first in Favour with my Lord *Somerset*, and knowing *Overbury's* Malice to himself and his House, thought it necessary that that Man should be remov'd and cut off; so as certainly it was resolved and decreed that

that Overbury must die. And then Mr. Attorney goes on, and shews the several Methods that were taken to effect it, which will appear at large in the Evidence hereafter. And first the Examination of Henry Payton, Servant to Sir Thomas Overbury, was read.

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He saith, he saw a Letter from his Master to the Lord of Somerset, wherein are these Words, *If I die, my Blood be upon you* : And in that, or another, *My Lord, you are now as good as your Word* ; you have kept your Vow to me. Then in the Gallery at Whitehall, my Lord coming late to his Chamber met Sir Thomas and said to him, How now ; are you up yet ? Nay, answered Sir Thomas, what do you here at this time of Night ? Will you never leave the Company of that base Woman ? And seeing you so neglect my Advice, I desire that to Morrow we may part ; and that you will let me have that Portion you know is due to me, and then I will leave you free to your self, to stand on your own Legs. My Lord Somerset answered, His Legs were strait enough to bear himself, and went away in Anger. That it being in the Dead of Night, and the Deponent in a Room adjoining to the Gallery, happen'd to hear this : And that to his certain Knowledge they were never perfectly reconcil'd again.

Evidence of the Earl's Malice against Sir Thomas.

The said Henry Payton depos'd *viva voce* in Court, that every part of this Examination was true : And farther, that when his Master was in the Tower he sent a Letter to this Deponent by Weston, to give my Lord ; and also to deliver this Message, That the Powder my Lord had sent him had made him very sick, and given him in one Night sixty Stools, besides Vomits : That the Deponent carried this Letter, and sent it in to my Lord, who came out to him, and ask'd how his Master did ; and having deliver'd his Message about the working of the Physick, my Lord smil'd, and cry'd Pish, and so turn'd away.

The Examination of L. Davies, another Servant of Sir Thomas's.

He

He affirmeth, he heard his Master say, that he would have gone Embassador but that my Lord Rochester dissuaded him.

Then Sir Tho. Overbury's first Letter to my Lord Somerset was read.

Letters sent by
Sir Tho. Over-
bury to the Earl
from the Tower.

“ Is this the Fruit of my Care and Love to you?
“ Be these the Fruits of common Secrets, common
“ Dangers? As a Man you cannot suffer me to lie
“ in this Misery; yet your Behaviour betrays you.
“ All I entreat of you is, that you will free me
“ from this Place, and that we may part Friends.
“ Drive me not to Extremities, lest I should say
“ something that you and I both repent. And I
“ pray God that you may not repent the Omission of
“ this my Counsel in this Place, whence I now
“ write this Letter.”

Sir Thomas's Second Letter.

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“ This comes under Seal, and therefore shall be
“ bold: You told my Brother *Lidcote*, that unre-
“ verend Style might make you neglect me. With
“ what Face could you do this, who know you
“ owe me all the Fortune, Wit and Understanding
“ that you have, and yet pretend the Reason why
“ you seek not my Liberty, is my unreverend Style?
“ while in the mean time you sacrifice me to your
“ Woman, still holding Friendship with those that
“ brought me hither. You bad my Brother *Lid-*
“ *cote* keep my Desire of Liberty secret; yet this
“ shall not serve your Turn, for you and I e'er it be
“ long will come to a publick Tryal of another Na-
“ ture. I am upon the Rack, and you are at Ease,
“ and yet I must say nothing! When I heard, not-
“ withstanding my Misery, you went to your Wo-
“ man, curl'd your Hair, prefer'd Gibbe into the
“ Bed-Chamber, and in the mean time send me
“ nineteen Projects how I should cast about for my
“ Liberty, and give me a long Account of the
“ Pains you have taken, and then go out of Town:
“ I wonder to see how you should neglect him, to
“ whom such Secrets of all kinds have passed, and
“ suffer my Mother and Sisters to lie here in Town,
“ expecting

“ expecting my Liberty ; my Brother *Lidcote* to be
“ quite overthrown in respect of my Imprisonment,
“ and yet you stand stupid, and I have neither Ser-
“ vant or Friend suffered to come to me — Well,
“ all this Vacation I have written the Story be-
“ twixt you and me ; how I have lost my Friends
“ for your sake ; what Hazard I have run ; what
“ Secrets have pass’d betwixt us ; how, after you
“ had won that Woman by my Letters, that then
“ you conceal’d all your after Proceedings from me :
“ And how upon this there came many Breaches
“ betwixt us ; of the Vow you made to be even
“ with me ; and sending for me twice that Day I
“ was caught in the Trap, persuading me it was a
“ Plot of my Enemies to send me beyond Sea, and
“ urging me not to accept it, assuring you would
“ free me from any long Trouble. On *Tuesday* I
“ made an end of this, and on *Friday* sent it to a
“ Friend under eight Seals. And if you persist
“ still to use me thus, assure yourself it shall be
“ publish’d. Whether I live or die, your Shame
“ shall never die, but ever remain to the World,
“ to make you the most odious Man living.”

Henry Payton and *L. Davies* both depos’d, they
knew the Letters above to be *Sir Thomas Overbury’s*
Hand-Writing.

Simcock’s Examination read.

He saith, That when *Sir Thomas* was in the Tower,
Weston often told him, that my Lord *Somerset* charg’d
him to look to *Overbury* well ; for if ever he came
out, one of them two must die — And to shew
that the greatest Matters of State were communi-
cated by my Lord to *Sir Thomas*, another Exami-
nation of *L. Davies* was read ; importing, that
several Packets that were sent to the King were
given to *Sir Thomas* by my Lord, seal’d up, who
broke them open, took short Notes out of them,
and then seal’d them up, and return’d them to my
Lord *Somerset* again.

A Letter of the Earl of Northampton's to the Lord Somerset was read.

A Letter of the Earl of Northampton's.

" Now all is concluded about the Form of the Nonalty, I doubt not but God will bless the next Bargain. I hope hereafter to find better Pen and Ink in this Lady's Chamber."

Subscrib'd H. Northampton.

And underneath, I am a Witness to this Bargain,

FRA. HOWARD.

Then Franklin's Examination.

He saith, my Lady Somerset told him the Cause of this Hatred of Sir Tho. Overbury was, that he would pry so far into my Lord of Somerset, that he would put him down.

Then Wood's Examination (which see in Weston's Tryal;) importing, that the Lady Somerset offered him a Reward of 1000*l.* and Indemnity, if he would kill Sir Thomas.

Earl of Somerset's Examination.

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He saith, That it was once resolv'd, some Body in Court should fall out with Overbury, and offer him some Affront, but that was not follow'd.

Sir Dudley Diggs sworn.

He depos'd, That Sir Tho. Overbury once told him he would undertake the Employment beyond Sea; and then sent him Word by Sir Robert Mansel, that he had chang'd his Mind: And Sir Robert told the Deponent, he saw a Letter from the Lord Somerset to dissuade him from it.

Lord Somerset's Petition to the King read.

Somerset owns himself the Occasion of Overbury's Imprisonment.

My Lord Somerset, in his Petition to the King, tells him, That having committed no Offence against his Majesty, or the State, he hopes he will not suffer him to be brought to a publick Tryal for his Reputation's sake: That it was not enough to give Life, if he did not save his Reputation too, which must suffer if he came to a Tryal; because the Presumptions would be strong against him, in regard he had consented to, and endeavoured the Imprisonment of Sir Tho. Overbury, though he design'd it for

for his Reformation, not his Ruin. But if he must come to a Tryal, he desir'd his Majesty's Mercy; and that he would give him Leave to dispose of his Lands and Goods to his Wife and Child; and would pardon her, she having confess'd the Fact.

Then Sir *Jervis Elvis*'s Examination was read, to prove that he was prefer'd to the Lieutenantancy of the Tower by my Lord *Somerset*'s Means.

Sir *Tho. Monson*'s Examination, shewing, that he recommended *Weston* to the Service of Sir *Jervis Elvis*, at the Entreaty of the Countess of *Somerset*. And *Weston*'s Examination, That my Lord and Lady *Somerset* spoke in his Behalf to the Lieutenant.

Earl of *Somerset*'s Examination.

He denies his Knowledge of *Weston*, either before his coming into the Tower, or since.

Sir *Jervis Elvis*'s Examination.

Saith, That *Overbury* was committed the 30th of April; that himself came to be Lieutenant the sixth of May; and that *Weston* was prefer'd to be *Overbury*'s Keeper the seventh of May.

Mr. *Overbury*, the Father, sworn.

After my Son was committed, I heard that he was very sick, and petition'd the King that some Physicians might have Access to him; and the King answer'd, his own Physicians should go to him: And upon this I address'd myself to my Lord *Somerset*, and none else, who said, my Son should speedily be delivered; but dissuaded me from preferring any more Petitions to the King: However, his Freedom being delay'd, I prefer'd another, and the King said I should have a present Answer; and my Lord *Somerset* told me he should suddenly be reliev'd; but that neither my Wife nor I should press to see him, because it might protract his Delivery; nor deliver any more Petitions to the King, because that might stir up his Enemies against him.

The Earl of *Somerset*'s Hypocrisy towards the Family of the *Overbury*'s manifested.

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Lord *Somerset*'s Letter to Mr. *Overbury*.

"Your stay in Town can nothing avail your Son's Delivery, therefore I would advise you to

“ retire into the Country, and doubt not before
 “ your coming Home, you shall hear he is a free
 “ Man.”

*Lord Somerset's Letter to Mr. Overbury after his
 Son's Death.*

Somerset's Letter to Mr. Overbury after his Son's Death.

“ Sir, Your Son's Love to me got him the Ma-
 “ lice of many ; and they cast those Knots on his
 “ Fortune that have cost him his Life ; so, in a
 “ kind, there is none guilty of his Death but I :
 “ And you can have no more Cause to commiserate
 “ the Death of a Son, than I of a Friend : But
 “ tho' he be dead, you shall find me as ready as
 “ ever I was to do all the Courtesies, that possibly
 “ I can, to you, or your Wife, or Children. In the
 “ mean time I desire Pardon from you, and your
 “ Wife for your lost Son, tho' I esteem my Loss
 “ the greater. And for his Brother that is in *France*,
 “ I desire his Return, that he may succeed his
 “ Brother in my Love.”

Several Depositions were read, shewing, that Sir *Thomas* was kept close Prisoner by the Order of the Lord *Somerset*, though he were committed only for a Contempt.

Other Depositions, shewing how inquisitive the Lord and Lady *Somerset* were about *Overbury's* Health ; and in one Letter from the Lord to the Lady, he says if *Weston* did not dispatch him presently, he would be out.

Examinations
 taken without
 Oath read.

N. B. Some of these Examinations that were read against him were taken without Oath.

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Four of my Lord *Northampton's* Letters were produc'd, concerning his Practices with the Lieutenant to keep *Overbury* close Prisoner ; and in one of them he tells my Lord *Somerset*, that the Lieutenant had undertaken, that either *Overbury* should do him good Offices with the Lord *Suffolk*, when he came out, or else he should never recover ; which he thought the most sure and happy Change.

These Letters the Prisoner acknowledged to have received.

Then

Then the Court exhorted his Lordship to confess the Fact, before more Evidence was produced against him ; but he said he came with a Resolution to defend himself. After this my Lord High-Steward, and the rest of the Lords, retir'd. *Qu. If they adjourn'd themselves.*

Query.

Then Proof was made of a Powder, being Arsenick, sent Sir Thomas in a Letter, writ with the Prisoner's own Hand : And the Prisoner acknowledged he had sent a Powder, but it was only a Vomit he said.

The sending of poison'd Tarts also was prov'd, as had been done at the former Tryals ; and a Letter written by the Lady Somerset to the Lieutenant was produc'd ; wherein she says, I was bid to tell you, that in the Tarts and Jellies there are Letters, but in the Wine none ; and of that you may take your self, and give your Wife and Children, but of the other not. Give him these Tarts and Jellies this Night, and all shall be well. — And my Lady Somerset, at her Examination, own'd, that by Letters she meant Poison.

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Also Proof was made of the Prisoner's being very solicitous to know, if Sir Thomas was dispatch'd, and of the Success of the Poisons.

Then Franklin's Examination was read, concerning his being sent for to the Cock-pit by the Lady Somerset, after Weston's Apprehension ; and being made to take an Oath of Secrecy, in order to suppress the Discovery.

Then the Examination of Sir Robert Cotton was read, who saith, that my Lord Somerset deliver'd several of Sir Thomas Overbury's Letters into his Hands after the Discovery of this Fact ; and that the Examinant cut off part of some, and put Dates to others by my Lord's Directions.

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He saith further, That, at the Entreaty of my Lord Somerset, a little before Michaelmas last, he got him a Draught of the largest Pardon, and the Precedent was of one that King Henry VIII granted to Cardinal Wolsey ; wherein, among other Offences of small Account, before and after Treason and Murder were foisted in.

Somerſet's Defence.

The Lord *Somerſet* ſaid in his Defence, That for the Powder that was ſent *Overbury* to make him ſick, that ſo he might have the better occaſion to ſpeak to the King for him: This *Overbury* himſelf deſir'd, and it was upon his Letter he ſent it: That though it was true that he conſented to his Impriſonment, to the end he ſhould be no Impediment to his Marriage; yet he gave Orders he ſhould have the moſt airy Lodgings, and that he might ſpeak to whom he would.

That though Breach of Friendſhip had been urg'd as an Aggravation againſt him, it was no wonder for Friends to fall out ſometimes; and he thought *Overbury* never had a Friend to whom he had not given Offence.

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That for the Communication of Secrets between *Overbury* and him; and for the Extracts he took out of Embaſſadors Letters, he confeſs'd this, That he knew his Ability, and what he did was by the King's Commiſſion.

Whereas it was urg'd he caus'd him to reſuſe the Embaſſage, it was not true; for he would willingly have had him undertaken it: And that *Overbury* himſelf put him upon Writing that Letter to diſſuade him from going, and deſir'd the Priſoner to take it upon himſelf: But that the Priſoner would gladly have had him gone, that he might be out of the way at that time, both in reſpect of his Marriage, and his Insolence, and ſo could not be ſuppos'd to have us'd any Means to prevent his going.

And whereas he was charg'd with ſending poiſon'd Tarts to the Tower; his Wife, in her Confefſion, ſaid, that ſome were whoſome, and others not; and it ought to be taken, that he ſent the Good, and ſhe the Bad; and that he intended nothing more by *Overbury's* Impriſonment, than that he ſhould be no Impediment to his Marriage.

That as to my Lord *Northampton's* Letters, he underſtood no more by them, than that the Lieutenant would endeavour to make *Overbury* a good Inſtrument between him and *Suffolk*. And where *Elvis*, at the End of his Letters, ſays, *Death were the beſt way*, if he had the Answers to thoſe Letters
by

by him, they would justify him: That he had indeed endeavoured to get a Pardon; for having many Things of Trust under the King, and the Custody of both Seals, without particular Warrant, he desired by this Means to be exonerated. And for the general Words, the Lawyers put them in without his Privy.

Then he recommended his Cause to the Peers, and they withdrew: And being return'd again to their Places, and call'd over by the Clerk of the Crown, the Lord High Steward demanded of them severally, beginning with *Robert Lord Dormer*; Whether *Robert Earl of Somerset* were guilty of the wilful Poisoning and Murder of *Sir Tho. Overbury*, as Accessary before the Fact? To which the Lord *Dormer*, and so the rest of the Lords, one after another, in their Order, answer'd *Guilty*.

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The Lord *Somerset* convicted

Then my Lord *Somerset* having taken off his *George* himself was brought to the Bar again; and it being demanded what he could say why Judgment should not be pronounced against him; He answer'd, he had nothing more to say.

And the usual Sentence for Felony was pronounc'd against him by the Lord High-Steward (*viz.*) That he should be carried back to the *Tower*, and from thence to the Place of Execution, where he should be hang'd till he was dead.

Judgment given against him.

The Prisoner desir'd the Lords to intercede for him, after which my Lord High-Steward broke his Staff, and the Court was dissolved.

The Countess of *Somerset*, some short time after, receiv'd a Pardon, with this Restriction, That her Imprisonment in the *Tower*, or other Confinement, by his Majesty, was not pardon'd.

Page 261.
The Earl and Countess both pardon'd, but confin'd.

The Earl had not his Pardon till a little before the King's Death, and they both remain'd Prisoners in the *Tower* for several Years: But on the 18th of *January 1622*, the following Order of Council was made.

"Whereas his Majesty is graciously pleased to enlarge and set at Liberty the Earl of *Somerset* and his Lady, now Prisoners in the *Tower of London*; and that nevertheless, it is thought fit that both the said Earl, and his Lady be confin'd to some

Page 263.
The Council's Order as to their Confinement

“ some convenient Place: It is therefore, according
 “ to his Majesty’s gracious Pleasure and Command,
 “ order’d, That the Earl of *Somerset* and his Lady do
 “ repair either to *Grays*, or *Cowsham*, the Lord *Walling-*
 “ *ford*’s Houses in the County of *Oxon*, and remain con-
 “ fin’d to one or other of the said Houses, and with-
 “ in three Miles Compass of either of the same, un-
 “ til further Order be given by his Majesty.”

It appears by the Pardon of the Countess, that these were the Motives that induc’d his Majesty to pass it.

Motives men-
 tion’d in the
 Countess’s Par-
 don, which in-
 duc’d the King
 to grant it.

1. In respect to her Father, Friends and Family.
2. Her voluntary Confession when she was Pri-
 soner, and at the Bar.
3. The Promise made publickly by the Lord
 High-Steward, and her Peers, to intercede with his
 Majesty for Mercy.
4. That she was not accus’d as Principal, but
 as Accessary before the Fact, by the Instigation of
 base Persons.

Great part of
 the Earl’s Estate
 restor’d him.

And it seems the King permitted the Earl to
 enjoy the greatest part of his Estate, notwithstand-
 ing his Attainder.

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*The Tryal of MERVIN Lord Audley (Earl
 of Castlehaven) for a Rape and Sodomy,
 April 25, 6 Car. I. 1631.*

Three Indict-
 ments against
 the Earl, one
 for a Rape on
 his own Wife,
 and two for So-
 domy.

THERE were three Indictments found at *Salis-*
bury in *Wiltshire* against the Earl, the *Wednesday*
 before *Easter*, before the Lord Chief-Justice *Hyde*,
 the Lord Chief-Justice *Richardson*, and Baron *Den-*
ham, Justices of Assize in that Circuit, and Special
 Commissioners for this Purpose.

The first Indictment was for a Rape upon his
 own Wife, for holding her by Force, while one of
 his Servants had carnal Knowledge of her Body.

The other two Indictments were for Buggery
 with a Man.

Before the Tryal the Judges met at *Serjeants-Inn*
 in *Fleet-street*, and came to the following Resolu-
 tions.

That

That a Peer might not put himself upon God and his Country, as a Commoner, but must be try'd by his Peers.

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A Peer may not be try'd by a Jury, though he desire it.

That a Peer could not challenge any of his Peers.

That a Peer might not have Council (any more than a Commoner) unless upon a Point of Law.

He cannot challenge his Peers: Or have Council.

That Examinations without Oath of the Party try'd might be read against him, but not the Examination of another without Oath.

Examinations without Oath ought not to be read.

That the Wife in this Case might be Evidence against her Husband, because she was the Party wrong'd.

The Wife an Evidence in Criminal Cases against her Husband.

Query.

That one standing mute in Rape or Buggery might have his Clergy: But then he might be try'd for another Buggery, and be deny'd Clergy: See 18 *Eliz. c. 7.*

That it was in the Discretion of the Court to have the Evidence open'd or not, if the Party stood mute,

That the demanding Clergy before the Party answer'd, where Clergy was allowable, amounted to a Confession.

Demanding Clergy amounts to a Confession.

That to denominate the Offence a Rape, there must be Penetration.

No Rape without Penetration.

At another Meeting of the Judges, it was held, That where one stood mute in a Rape, he might have Clergy, but not in Buggery.

In a Rape one may have Clergy where he stands mute, but not in Buggery.

That the Lords Triers might eat and drink before they agreed, but could not separate or adjourn till they gave their Verdict; as was held in the Case of the Lord *Dacres*, who was try'd for Treason by his Peers, and acquitted, 26 *Hen. VIII.*

Lords Triers may eat, but cannot separate before Verdict.

That a Peer could not be convicted by a less Number than Twelve; and where Twelve were for convicting him, and Thirteen for acquitting, he should be acquitted.

Must be twelve of a Mind to convict a Peer.

That in an Appeal, if the Prisoner were mute, he should be hang'd: And that it was an Attainder.

In Appeal, if one stands mute, he shall be hang'd.

That a Lord of Parliament, standing mute on an Indictment, might be press'd to Death.

A Peer may be press'd to Death if he stand mute.

That the Lord Steward, after Verdict given, might take time to advise upon any Point of Law; and that his Office continued till Judgment given.

The Lord High Steward need not give Judgment immediately.

The

The Lord *Coventry*, Lord-Keeper; was appointed Lord High-Steward.

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The Court being /sat, and the Commission read, the High-Steward gave Leave to all the Lords, and to the Judges, and to all Privy-Counsellors present, to be covered: Then the Lords Triers were call'd over, and the Indictments commanded to be certified and brought in. And the Lieutenant of the Tower was call'd by a Serjeant at Arms to bring forth his Prisoner: And then the Lord *Audley* was set to the Bar.

It may be a Rape with a Whore, but not if she be his Concubine.

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Sir *Thomas Crew* opened the Indictment: And Mr. Attorney opened the Evidence, wherein he takes Occasion to observe, That although a Woman be a Whore, yet there may be a Ravishment: But that it was a good Plea to say she was his Concubine.

The Consent of the Woman afterwards will not purge the Offence.

No Punishment for Sodomy at Common Law.

Page 268.

And that if a Man took a Maid by Force and ravish'd her, and she afterwards gave her Consent, and married him, yet this would not purge the Offence, but it was still a Rape.

That for Sodomy it was not known in our Law, and consequently no Provision made against it till 25 *Hen. VIII.*

He observ'd, that this Lord had given himself over to Lust, and was constant to no Religion: That in the Morning he would go to Mass, and in the Afternoon hear a Sermon with the Protestants: And that he quoted Scripture to induce his Lady to lie with his Man *Skipwith*, and told her she was now made subject to him: And therefore, if she did ill at his Command, it was not her Fault, but his, and he would answer for it.

The Deposition of *Walter Bigg*.

The Evidence against the Prisoner.

That *Amptil* was Page first to Sir *H. Smith*, and that when he came to my Lord *Audley's*, he had nothing of his own more than the Beast he rode on: That my Lord entertain'd him eight Years, and gave him the Privilege of keeping Horses in his Grounds, by which means he enrich'd himself 2000 *l.* That afterwards my Lord married him to his Daughter, and gave him 7000 *l.* with her. That *Skipwith* was sent from *Ireland* to be my Lady *Audley's* Page, his Parents being very poor; and that my

my Lord suffer'd him to spend 500*l.* per Annum of his own Purse; and that he gave him at one time 1000*l.* and made several Conveyances of his Lands to him.

That my Lord was at first a Protestant, and afterwards turn'd a Papist: That he entertain'd one *Blandina* in his House, who bestow'd an ill Disease amongst them, and then he sent her away.

The Countess's Examination read.

She saith, That the first or second Night after the Earl married her, *Amptil* came to the Bed side, while she and her Husband were in Bed, and my Lord spoke lasciviously to her; and said, that now her Body was his, and that if she lov'd him, she must love *Amptil*; and that if she lay with another Man by his Consent, it was not her Fault, but his; and that if it was his Will to have it so, she must obey, and do it. That he endeavoured to persuade *Skipwith* to lie with her: And that *Skipwith* made him believe he lay with her, but did not.

The Countess's Examination read against him.

That he made *Skipwith* come naked into his Chamber, and delighted to call up his Servants to show their Privities, and would make the Examinant look on, and commended those that had the largest.

That one Night, being in Bed, his Lordship call'd to *Broadway*, who lay at his Bed's Feet, and about Mid-night made him come into the Bed (the Examinant being asleep) and lie next her: And that *Broadway* lay with her, and knew her carnally; and that she made Resistance, and his Lordship held both her Hands, and one of her Legs the while. That as soon as she was free, she would have kill'd herself with a Knife, but that *Broadway* forc'd it from her; and that before this Act of *Broadway*, she had never done it. That his Lordship delighted to see the Act done, and made *Skipwith* come into Bed with them to lie with her that he might see it, and she cry'd out to save herself.

The Earl holds his Wife while *Broadway* ravishes her.

Then *Laurence Fitz-Patrick* was produc'd as a Witness, and my Lord objected to his Testimony that he had not taken the Oaths: But the Judges resolv'd he might be a Witness notwithstanding, if he were not a Popish Recusant Convict.

A Papist a good Witness till convicted of Recusancy.

Then

Evidence of the Earl's committing Sodomy, and prostituting his Wife and Family.

Page 269.

Evidence of the Earl's soliciting his Servant to lie with his Daughter of 12 Years old, tho' she was married.

Then the Examination of *Fitz-Patrick* was read, which he confirm'd by his Oath *viva voce*, That the Earl had twice committed Sodomy with the Examinant: And that *Henry Skipwith* was an especial Favourite of my Lord's, and usually lay with him; That *Skipwith* said my Lord *Audley* made him lie with his Lady; And that he did it in this Examinant's Sight, my Lord being present; That this Examinant lay with *Blandina*, in my Lord's Sight, as did four more of his Servants; and afterwards the Earl himself lay with her in their Sights.

The Examination of *Skipwith* was read, which he also confirm'd upon Oath *viva voce*, That the Earl solicited him to lie with the Young Lady, and perswaded her to love him; and to induce her to do it, he told her that his Son did not love her; and that in the end he usually lay with the young Lady, and there was Love between them both before and after; and my Lord said, he would rather have a Boy of his begetting than any other. That the Young Lady was but twelve Years old when he first lay with her, and he could not enter her Body; and the Lord *Audley* fetch'd Oil to open her Body, but she cry'd out, and he could not enter; Then the Earl directed Oil to be brought a second time, and then this Examinant enter'd her Body and knew her carnally: And that my Lord made him lie with his own Lady, but he knew her not, tho' he told his Lord he did.

That the Earl allow'd him to spend 500 *l.* per Annum of his Money, and gave him his House at *Salisbury*, and a Manor of 600 *l.* per Annum; and that he, for the most part, lay with the said Earl. That *Blandina* lay in the Earl's House half a Year, and was a common Whore.

Edmund Scot and *Fry*'s Examination.

They say that *Skipwith* frequently lay with the young Lady, and the Earl encourag'd him in it, and protested he would fain have a Boy of his begetting.

The young Lady *Audley*'s Examination.

The young Lady *Audley*'s Examination to the same Purpose.

She saith, That she was married by a *Romish* Priest in the Morning, and at Night by a Prebend at *Kilkenny*; That she was first tempted to lie with *Skipwith*

Skipwith by the Earl's Allurements; and that she had no Maintenance but what she had from *Skipwith*. That she refused to lie with *Pawlet*; and that the Earl solicited her also to lie with one *Green*; That the Earl himself saw her and *Skipwith* lie together several times, and nine Servants of the House had also seen it.

That when the Earl solicited her first, he said, that to his Knowledge, her Husband did not love her; and the Earl threatned he would turn her out of Doors if she did not lie with *Skipwith*; and that he would tell her Husband she did, if she did not.

That she being very young, he used Oil to enter her Body first, and afterwards he usually lay with her with the Earl's Consent.

Broadway's Examination.

He saith, That he lay at the Earl's Bed's-Feet, and one Night the Earl call'd for Tobacco, and the Examinant brought it in his Shirt, and the Earl caught hold of him and bid him come into Bed, which he refused; but to satisfy my Lord, he, at last, consented and came in on my Lord's Side; but my Lord turned him upon his Wife, and bid him lie with her, which he did, and the Earl held one of her Legs and both her Hands; and, at last, notwithstanding her Resistance, he lay with her. That the Earl used the Examinant's Body as the Body of a Woman, but never pierc'd it, only emitted between his Thighs. — That he hath seen *Skipwith* lie with the young Lady in Bed, and when he had got upon her, the Earl stood by and encourag'd him to get her with Child — That the Earl hath made the Examinant kiss his own Lady, and often solicited him to lie with her; saying, that he should not live long, and it might be the making of the Examinant; and that the Earl hath said the same to *Skipwith*.

Broadway confesses the Rape upon the Countess.

And the Earl's committing Sodomy with him.

The Earl said in his Defence, That his Wife's Testimony was not to be regarded, since she had confess'd she was dishonest with *Broadway*. But was answer'd, he could not urge that Fact in his Defence, which he himself had forc'd her to suffer.

Page 270.
The Earl objects to his Wife's Testimony, she was lewd with *Broadway*.

Then

And that his Wife and Servants could not be Witnesses against him.

Then he urg'd, that his Wife and his Servants were not competent Witnesses in this Case; and that they were put upon this Practice by his Son, who sought his Life.

The Judges were of Opinion, That in Civil Cases the Wife could not be a Witness, but in a Criminal Matter, where the Wife was the Party griev'd, and on whom the Fact was committed, she might be a Witness against her Husband.

The Court resolve, That the Crime was Sodomy, if there were Emission, tho' no Penetration; and so in Rape it would be Felony.

No time limited for the Woman's Complaint on an Indictment.

They resolv'd also that it was Buggery within the Statute, without Penetration, where the Body is used so far as to emit thereupon: And so in Rape, where there was an Emission upon her Belly, it should be adjudged a Rape, and consequently Felony.

That where a Woman is forc'd, and shews her dislike, she is not limited to any time to make her Complaint, where the Process is by Indictment; but in an Appeal she is.

That Servants, or any others, are good Witnesses in Cases of Felony.

The Earl said his Wife had been naught in his Absence, and had had a Child, which he conceal'd to save her Honour. And having made Protestations of his Innocence, he said, Wo to that Man whose Wife and Servants should be admitted Witnesses against him, and whose Son should conspire his Death. He said his Son was now come of Age, and wanted his Lands; and his Wife a young Husband now he was grown old; and therefore they had plotted his Destruction: And hop'd their Lordships would take these Matters into their Consideration.

Page 271.

The Lord High Steward consulted in the Absence of the Prisoner.

The Prisoner convicted,

Then the Earl was commanded to withdraw. And afterwards the Lords Triers withdrew, and after two Hours Debate, and Consulting the Lord Chief Justice four several times; and having, during the time they were withdrawn, sent the Earl of *Warwick*, and the Viscount *Dorchester*, together with the Lord Chief Justice, to consult with my Lord High Steward, at length they return'd to their Places. And it being demanded, if the Earl was guilty of the Rape whereof he stood indicted, they all, in their Order, respectively answer'd that he was
Guilty.

Guilty. And as to the Sodomy, eleven of the Lords were for acquitting him, but he was found *Guilty* by sixteen.

And it being demanded what he could say why Judgment should not be pronounc'd against him, upon these several Convictions, he answer'd, he had nothing more to say; and then the Lord High Steward proceeded to pronounce the Sentence, viz. That you be carried back to the Prison from whence you came, and from thence to the Place of Execution, where you shall be hang'd by the Neck till you are dead.

Judgment pronounc'd.

But 'tis observable, that notwithstanding this Sentence he was beheaded. He is beheaded.

Fitz-Patrick and *Broadway*, my Lords Servants, were afterwards brought to their Tryals, the 27th of June, 1631, at the King's-Bench Bar, and try'd by a Jury of *Wiltshire* Men, the first for the Rape, and the other for Buggery. And the Countess herself appear'd in Court as a Witness against *Broadway*, and depos'd, that the Evidence she had given at my Lord's Tryal was true. And the Court demanded of her, whether the Prisoner, when he lay with her by force, enter'd her Body: She answer'd, that he had carnal Knowledge of her, and enter'd her Body, and she intended to express so much by her former Deposition at my Lord's Tryal.

Fitz-Patrick and *Broadway*, my Lord's Servants, try'd and convicted; the one for a Rape on his Lady, the other for Sodomy.

Fitz-Patrick's Examination was produc'd as Evidence against him; to which he said, the Evidence he had given for the King, against the Earl, ought not to be made use of against him: To which the Court answer'd, that Evidence would serve, and was sufficient to convict him. Then the Jury demanded, if the Party who suffer'd the Buggery to be committed upon him, could be said to commit Buggery, as were the Words of the Statute? The Lord Chief Justice answer'd, that every Accessary to a Felon is a Felon in Law: And he voluntarily prostituting his Body, when he was not only of Understanding and Years to know the Heinousness of the Sin, but of Strength to resist his Lord; he was guilty; and accordingly the Jury found them both

Page 272.
The Person prostituting himself guilty of Buggery as well as the Actor.

They are executed.

both Guilty of their respective Indictments; and Sentence was pass'd upon them, and they both of them confess'd the Facts at their Execution.

Page 273.

The Tryal of WILLIAM PRYNN, Esq; in the Star-Chamber in Hilary-Term, 9 Car. I. 1633, for writing and publishing a Book, entitled, Histriomastix, or a Scourge for Stage-Players, &c. As also the Tryal of MICHAEL SPARKS for printing, and of WILLIAM BUCKNER for licensing the same Book; and Four others who were concern'd in the printing Part of it.

The Information for a libellous Book, call'd *Histriomastix*, against all sorts of Plays and Recreations; and reflecting on the King, Queen, Court, &c. for permitting them, being present at them.

Also against keeping Festivals, &c.

THE Information which was brought in the Name of the Attorney General, Mr. Noy, sets forth, " That in or about the Eighth Year of the
 " Reign of his present Majesty King Charles, the Defendant, *William Prynn*, did compile and put to the
 " Press a libellous Volume, entitled *Histriomastix*,
 " against Plays, Masks, Dancings, &c. And altho' he
 " well knew that his Majesty, the Queen, and the
 " Lords of the Council, &c. were at publick Festivals,
 " and other times Spectators at some
 " Masques, Dances, and Recreations, that were in-
 " offensive, and so published to be by a Book printed
 " in the Reign of his Majesty's Royal Father;
 " yet the said Defendant *Prynn* had, in his said
 " Book, rail'd and inveigh'd against Stage-Plays,
 " Comedies, Dancings, and all other Exercises of the
 " People, and against all that behold or are present
 " at them. And also had proceeded to inveigh
 " against Hunting, publick Festivals, keeping
 " *Christmas*, Bonfires, Maypoles, and even the dressing
 " up of Houses with Ivy. And to manifest his
 " evil Intentions in publishing the said Libel, he
 " had therein used several Arguments and Incitements,
 " to stir up and provoke the People to Discontent,
 " as if there were just Cause to lay violent
 " Hands upon their Prince. And that he had
 " therein

“ therein used many infamous Speeches and Ex-
 “ pressions against his Majesty and his Household,
 “ very unfit to be used towards so sacred a Person.
 “ That he had cast several Aspersions upon her
 “ Majesty the Queen, and been guilty of Railing
 “ and uncharitable Censures against all Christian
 “ People. And that he recommended such as were
 “ of factious Spirits, and had vented any thing
 “ against the State, such as Dr. *Leighton*, *Mariana* the
 “ Jesuit, &c. in order to withdraw the People from
 “ their Duty and Allegiance to his Majesty, which
 “ was of most dangerous Consequence to the Realm
 “ and State — That this libellous Book, con-
 “ taining 1000 Pages, he had dealt with the De-
 “ fendant, *Michael Sparks*, for the printing off, being
 “ a common Publisher of unlawful and unlicens’d
 “ Books; and that he had dealt with *Buckner*, an-
 “ other Defendant, for the allowing it for the Press;
 “ and with the other four Defendants to print part
 “ of it, and publish the same; by which means
 “ the said libellous Volume was allow’d and pub-
 “ lish’d, to the great Scandal of the Government
 “ and the whole Realm, &c.

To which Information the Defendant *Prynn* put *Prynn's Answer*
 in his Answer to this effect; That having con-
 sider’d the great Resort of People to Plays, and the
 Opinions of Divines, and other Authors, concer-
 ning them, not intending to reflect on the King,
 Queen or State: He confesses he did compile the
 said Book, call’d *Histrionastix*, which was nothing
 else but a Collection of divers Arguments against
 Stage-plays. That he did commit the same to the
 Defendant *Michael Sparks*, to be perused by such
 Persons as had Authority to license Books; and that
 it was carried to the Defendant *Buckner*, who had
 Authority to allow Books for the Press, who kept
 it three Months and perus’d it; and that this Copy
 was afterwards carried, with the Licence, to *Sta-*
tioners-hall, and enter’d there: Whereupon the De-
 fendant, Mr. *Prynn*, concluded he had a sufficient
 Warrant for publishing the same; and accordingly
 it was printed publickly, and not in a private
 clandestine Manner. As to his commending Dr.
Leighton, &c. who had been censur’d by this Court,
 VOL. I. N he

he did adhere to their Opinions no farther than they were agreeable to Law ; and that his Book was printed long before Dr. *Leighton* was call'd in question : And says, that he was so far from inciting or encouraging others in Schism or Sedition, that he had, with much Joy and Thankfulness to God, ever acknowledged the Happiness and Peace he, and the rest of his Majesty's Subjects, enjoy'd under his Government. And that he had taken the Oaths in the University and Inns of Court, when he took his Degrees there. That he never approv'd of Schism or Sedition ; and that if any thing in the said Book, contrary to his Design, should be construed to tend that way, he prostituted himself at his Majesty's Feet, and crav'd Pardon and Grace : And desires the Court to take it into their Consideration that he had been already a Year Prisoner in the *Tower*.

Buckner's Answer.

The Defendant *Buckner* saith, That he was Chaplain to the late Archbishop of *Canterbury*, and did license part of the said Book, but never gave Orders for the dispersing of it ; and when he heard it was published, he endeavour'd to suppress it ; and that he abhor'd and detested the Censures contain'd in it against Ecclesiastical Persons, &c.

The Answer of *Sparks* and the rest.

The Defendant *Sparks* says, the Book was duly licens'd ; and denies he was a Printer of unlawful Books. And the rest of the Defendants deny all manner of Combination, and say they were illiterate People, and unacquainted with the Contents of the Book ; and that it being licens'd and enter'd at *Stationers-hall*, they hop'd they should not fall under the Displeasure of the Court.

Mr. *Atkins* (afterwards one of the Justices of the Common-pleas) open'd Mr. *Prynn's* Answer ; and Mr. *Lightfoot* open'd Mr. *Buckner's* Answer ; and Mr. *Jenkins* the Answers of the other Defendants.

Mr. Attorney
Noy enforces the
Charge.

Then Mr. Attorney General proceeded to open and enforce the Charge against the Defendant *Prynn*, and observed, that some Passages in this Libel reflected upon the King and Government, and others upon the Church and Clergy ; but he had not charg'd him, in the Information, with his Offences against the Church, but left her to avenge herself

herself upon him, and inflict such Punishment as he deserved. That the Book was the Witness, and testified his Intention, and by the Book he was to be judged. He observ'd that it was grown seven times bigger than it was at its first compiling and sending to the Press. That it had been shewn to Dr. Goad and Dr. Harris seven or eight Years ago, who disapprov'd of it, and discourag'd the Defendant's publishing of it, but that still he persisted.

Page 2

That in his Book Stage-players are term'd Rogues, but that they were not deem'd such by the Statute, unless they wander abroad: And that the same Term he had bestow'd upon Scholars who act. And his Purpose seem'd to be, to insinuate that we were running again into Paganism. That he fell upon things that had no relation to Plays, as Musick in general, Church Musick, Dancing, New-years Gifts, and Church Ceremonies promiscuously. Then upon Altars, Images, the Hair of Men and Women, Bishops, Bonfires, Cards and Tables, he censures them together; and even Perukes could not escape his lash; and from the whole infers, we were returning to Paganism, and so endeavours to persuade Men to go and serve God in other Countries, and many had gone already, and set up new Laws and Fancies of their own; and that it ought to be well consider'd what would be the Consequence of these Things.

Says the Book
Condemn'd
Musick, Dan-
cing, &c. and
Church Cere-
monies.

The Hair of
Men and Wo-
men; and In-
sinuations that
we were retur-
ning to Paga-
nism, were in it.

That though it might be fit and lawful for those who had a Mission to write against the abuse of Plays, in sober and modest Terms; that could not excuse Mr. Prynne, who could pretend no Mission, and had raked together all the vilest Terms and *Billingsgate* Language to revile the Government and all Mankind.

He censures
every Thing,
and all Mankind
in the vilest
Language.

Then Mr. Attorney proceeded to his Proofs; and first, a Part of Mr. Prynne's Examination was read, wherein he confesses he wrote and compos'd the said Book, without the Assistance of any one.

Dr. Goad depos'd, That about eight Years since, Prynne brought a Book to him, of about a Quire of Paper, concerning Stage-plays, to be licens'd; and

Prynn affirms he would die rather than put on Woman's Cloaths.

that the Deponent disallow'd of it. And that as to the Argument concerning a Man's putting on a Woman's Apparel, the Deponent ask'd the Defendant, if he were persecuted by Infidels, whether he would scruple disguising himself in his Maid's Apparel, to make his Escape. And *Prynn* answer'd, that he thought he should rather suffer Death than do it.

Dr. *Harris* depos'd, That *Prynn* brought the same Book to him to be licens'd, about seven Years since, but he disallow'd of it.

The Examination of *Austin* the Stationer was read, who depos'd, That about the time of the last Parliament, he did, at the Request of the Defendants, *Prynn* and *Sparks*, print about seven Sheets of the said Book, upon their informing him that it was licens'd, and they would bring him the Hand of the Licenser.

The Examination of *Joseph H*— was read, who depos'd, That the Defendant *Sparks*, in the time of the last Parliament, did print divers Books without Licence, and among the rest, Mr. *Prynn*'s and *Burton*'s Works; and that he heard *Sparks* say, he dare print any Thing in Parliament-time.

Then Mr. *Mason*, of Council for the King, produc'd and repeated many of those Epithets and Passages, whereby Mr. *Prynn*, in his said libellous Book, had not only aspers'd the Government, but all kinds of People.

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Prynn compares this with *Nero's* Reign.

Mr. Attorney went on, and observ'd how he had aspers'd all Magistrates, and even the King himself, and his Household; and that he had spar'd no sort of Persons of either Sex, but fallen upon all, without Distinction; and that he was full of his odious Comparisons, insinuating there was a Resemblance between his Majesty's and that Tyrant *Nero's* Reign; and Mr. Attorney directed that Passage to be read, where he says, *The Multitude of our London Play-haunters are so augmented, that all the ancient Devils Chapels, tho' Five in number, are not sufficient to contain their Troops, whence we see a Sixth now added to them; whereas even in vicious Nero's Reign, there were but Three standing Theatres in Pagan Rome, tho' far more spacious than Christian London.*

Several

Several other Passages reflecting on the King and Government were read.

Then Mr. *Atkins*, in behalf of *Prynn* the Defendant, said, That many Passages in his Book were only relatively spoken, and most of them were but the Opinions of other Authors; said that he did not condemn New-years Gifts, or dancing of single Persons; and protested 'twas the farthest from his Thoughts, to compare the present Times, in which we were govern'd by a most pious and religious Prince, to those of *Nero*. But that what Mr. *Prynn*'s Intentions were, was best known to his own Heart, he could not wholly excuse his Pen, only he beg'd leave to say, that he had known him some time, and (except as to the Matters in his Book) his Conversation had not been factious or seditious: But he suppos'd he had so fix'd his Eyes upon the Abuses of the Stage, that he had neglected to guide his Pen; and that he had advised him to lay hold on the Rock of the King's Favour, and the Mercy of the Court.

Mr. *Atkins*'s Arguments in defence of *Prynn*.

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Mr. *Holbourn*, of Council with the Defendant *Prynn*, said, That he confess'd he was justly brought before their Lordships, for his ill Expressions, which might prove an Occasion of Scandal, by Misconstruction; but beg'd their Lordships would believe his Intentions were fair and honest, tho' his Expressions harsh; and that they were his Author's Words and not his own. And that he hop'd the Abuses of Plays would a little plead his Excuse. That those who had licens'd the Book were rather guilty than he; and that none but unlicens'd Books had hitherto been brought before this Court. That his Dedication of his Book to such a Society, and his presenting one of them to Mr. Attorney, spoke the Innocency of his Intentions; nor did he ever abscond as conscious he had done amiss; and that having taken Opportunities of speaking in the Praise of his Majesty and the Government, he could not be suppos'd to intend any thing against them. And that the Charge against him was made out by Inferences and Consequences that were forc'd and strain'd; and that the Pas-

Mr. *Holbourn* excuses him.

Mr. *Hern* continues his Defence.

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pages quoted did not of necessity carry that Meaning that had been put upon them.

Mr. *Hern*, being also assign'd Council to Mr. *Prynn*, desir'd that their Lordships would contrive his Intentions as he had explain'd them by his Oath; and as that had been admitted Evidence against him, as to his compiling the Book, that they would also admit it to be Evidence for him, to clear the Integrity of his Heart. And besought their Lordships to look upon him, not as writing these things out of Perverseness of Spirit, but out of the abundance of his Heart, as he was transported with Zeal against those Evils, that had occasion'd the Ruin of many in this Nation, and some of his own Acquaintance; and mention'd some Passages in his Book, from whence might be infer'd his good Intentions towards his Majesty and the State. *But no such Passages were read.*

Three Days having been spent in hearing this Cause; on the fourth Day the Lords attended, in order to give Sentence. And first *Francis* Lord *Cottington*, Chancellor of the Exchequer, proceeded to censure Mr. *Prynn* and the other Defendants.

Lord *Cottington's* Censure of *Prynn*.

He said the Defendants stood charg'd with publishing a libellous Book, or rather a Volume of Libels against his Majesty and the State. That Mr. *Prynn* had express'd his Malice against King, Prince, Peers, Prelates, Magistrates, against all Mankind, and against all Things (but most remarkably against the Church and the Government thereof, but that being no part of the Information, he forbore to censure him for that.) That he lik'd neither Musick, Dancing, nor any kind of Recreation, no, not Hawking or Hunting, but had damn'd them all: And, indeed, that he would have every Body discontented, that he might have a new King, new Government, a new Church, new Laws, and new Entertainments suitable to his Disposition.

That his Expressions were to be taken according to the plain and genuine Sense of them, and not according to the Interpretation he was now pleased to put upon them. And that he did not speak relatively, as his Council would insinuate, but positively; when he says, *That our English Ladies,*
born

shorn and frizled Madams, have lost their Modesty ; that Plays are the chief Delight of the Devil, and they that frequent them are damn'd : And that Princes dancing in their own Persons, was the Cause of their untimely Ends. And that tho' he pretended his Intention was only against publick and common Plays, yet the Tenor of his Book was against Plays in Princes Palaces. That his Book was level'd against the King and State ; and that he deserv'd another sort of Tryal ; and the Defence he had made rather aggravated his Offence. Therefore his Sentence was, That the Book be burnt by the common Hangman ; That he be put from the Bar, and excluded from the Society of Lincoln's-Inn ; and that he be degraded by the University of Oxford. That he stand in the Pillory at Westminster and in Cheap-side, and lose an Ear at each Place ; and stand with a Paper on his Head, declaring his Offence to be the publishing an infamous Libel against both their Majesties and the Government. That a Fine of 5000 l. be set on him, and perpetual Imprisonment.

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As to *Buckner*, it appearing he had licens'd 64 Pages of the Book, he set a Fine of 50 l. upon him.

And as to *Sparks*, his Sentence was, that he should stand in the Pillory and be fin'd 500 l. (but for the other Defendants, Mr. Attorney having forbore to proceed further against them, they were not Censur'd.)

With this Sentence, the rest of the Lords, in the main, concur'd.

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The Tryal of JOHN Lord Balmerino, for contriving and publishing a Libel against his Majesty and the Government, at the Town-hall in Edinburgh, the Third of December, 10 Car. I. 1634. Before William Earl of Errol, Great Constable of Scotland, Lord Justice General, and Sir Robert Spotswood, Sir John Hay, and Sir James Learmouth, Assessors to the said Lord Justice General.

THE Lord Advocate, Sir *Thomas Hope*, produc'd his Majesty's Letter, commanding him to prosecute the Prisoner, for the Crimes contain'd in the following Indictment, with an Act of Session, nominating the abovesaid Assessors.

The Indictment for a libellous Petition.

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Reflecting on his Majesty's Administration, which, by the Laws of Scotland, is punishable with Death.

The Indictment sets forth, " That whereas by the
" Laws and Statutes of the Kingdom of Scotland,
" whoever shall speak or write any thing which may
" cause any Reproach or Scandal to the King or
" Government, or deprave the Laws, or mis-
" construe the King's Actions, whereby any Mis-
" understanding may be mov'd between his Ma-
" jesty and his Subjects, shall incur the Pains of
" Death. And whoever shall hear such scandalous
" Speeches or Writings, and not apprehend the
" Authors, if it be in his Power, or shall not re-
" veal the same to his Majesty, the Privy Council,
" or some inferior Magistrate, shall incur the like
" Pain and Punishment as the principal Offender.
" And whereas a most scandalous and seditious Libel
" had been found in the Hands of one Mr. *John Dun-*
" *mure*, Notary in *Dundee*, and divulg'd and dis-
" pers'd in the Hands of several of the King's Sub-
" jects, taxing his Majesty's Behaviour to his Par-
" liament, reproaching his Government, depra-
" ving divers Acts of Parliament, and mis-con-
" struing his Majesty's Proceedings: Which said
" scandalous and seditious Libel, the said *John*
" *Dunmure*, upon his Examination, depos'd he
" had

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“ had from the said John Lord Balmerino; and
 “ the said John Lord Balmerino had confes’d the
 “ same, and affirm’d that he had the said Libel
 “ from one Mr. William Haig, whom he thought
 “ to be the Penner thereof. Of which said
 “ scandalous Libel, the said John Lord Balmerino
 “ was indeed the Author and Contriver; or, at
 “ least, was guilty of the hearing thereof, and of
 “ the concealing and not revealing of the said Mr. *William Haig*, whom he affirm’d to be the Author
 “ of the same; and also was guilty of the not ap-
 “ prehending of the said Mr. *William Haig*, it ha-
 “ ving been in the said Lord’s Power to have taken
 “ and apprehended him. And that he was also
 “ guilty of divulging and dispersing the said Libel
 “ amongst his Majesty’s Subjects. And that the
 “ Prisoner so far knew of the making the same, that
 “ he interlin’d it, in divers Places, with his own
 “ Hand; That after it was fram’d, the Prisoner
 “ deliver’d it to the Earl of *Rothes*; and that he
 “ caused his Servant, *Robert Daglish*, to make a Copy
 “ of it, and deliver to the said John *Dunmure*, on
 “ whom it was found, by means whereof it was
 “ divulg’d and dispers’d amongst his Majesty’s Sub-
 “ jects, and openly read and expos’d to their View,
 “ to the Prejudice and Dishonour of his Majesty.
 “ And that since the Prisoner had suffer’d the said
 “ *Haig* to escape, he had receiv’d several Letters
 “ from him, which he conceal’d; in which the said
 “ *Haig* affirm’d and avow’d that he had the Allow-
 “ ance and Approbation of the Prisoner in the ma-
 “ king and penning thereof: All which did evince,
 “ that the Prisoner was the Author, Adviser and
 “ Publisher of the said infamous Libel; at the
 “ least, Concealer, and not Revealer thereof, &c.
 “ incurring thereby the Pain and Punishment of
 “ Death, which ought to be inflicted on him with
 “ all Rigour, in Example to others who should at-
 “ tempt the like.

Concealing the
Author of such
a Libel Capital.

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N. B. The greatest part of the Libel is set forth in the
 Indictment. It was directed to his Majesty, and
 stil’d, The humble Supplication of a great number of the
 Nobility and Others, Commissioners in the late Parliament.
 In

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The Substance
of the Petition.

They are apprehensive his Majesty will new model the Kirk; and seem to threaten him if he attempts it.

In this Petition, the *Scots* express their dislike of some Acts of Parliament that had pass'd, empowering his Majesty, with the Consent of the Clergy, to prescribe what Apparel they should wear in time of Divine Service: And authorizing him, with a competent number of the Clergy, to make Laws and Constitutions, in relation to Ecclesiastical Affairs; and they acquaint his Majesty, that if he does make use of the Authority given him by those Acts, to introduce any thing new in Matters of Religion, that he would endanger losing the Hearts of many of his Subjects.

They also represented, That no just Prince ever censur'd his Subjects for giving their Votes; and that the Notes his Majesty took, of the Names of those who dissented from such Acts as had pass'd that Session he was in *Scotland*, and his refusing to hear the Reasons of those who dissented, made them very apprehensive of Innovations intended to be introduc'd in the Kirk.

Page 288.

That he favour'd the Arminian Doctrine.

Charge the King with admitting Papists to sit in Parliament.

And they tax him also with squandering away the Supplies granted in Parliament, and the Revenues of the Crown of *Scotland*, upon his extravagant Courtiers; and affirm, That he allow'd the printing of Books of Popery and Arminianism in *England*, and suppress'd the Answers to them; and suffer'd Arminianism to be preach'd in *Scotland*, without Censure. That he admitted Papists to sit in Parliament, contrary to Law. That these Things had occasion'd great Fears and Perplexities in the Minds of his Subjects. They say they are ready to condescend to his Majesty in any thing that did not break in upon their Religion and Laws: And complain of Abuses in the Coin; and of his Majesty's slighting their Representations of their Grievances. And upon this Petition the Indictment was founded.

Page 289.
Council assign'd
the Prisoner.

The Prisoner produc'd an Order of the Lords of Session, appointing those Gentlemen of Council for him that he had petition'd for.

The Prisoner's Council objected to Sir John Hay, the Clerk Register, being an Assessor or Judge in this Cause, because he was upon the Committee for the Examination of the Prisoner, and had advised the

the abovesaid Indictment to be brought against him, &c. But the Prisoner was content to wave this Objection.

The Prisoner desir'd, that the Depositions of Mr. John Dunmure, Mr. Robert Daglish, the Earl of Rothes, Mr. Peter Hay, and the Letters sent by Mr. William Haig to the Prisoner, might be perus'd by his Council; which was granted. And upon Friday the fifth of December the Tryal came on.

The Prisoner prays his Council may peruse the Depositions against him.

The Council for the Prisoner urg'd on his behalf, That it was not the Intent of the Legislature, in making those Acts upon which the Indictment was founded, to inflict Capital Punishment upon the Authors of such Reproaches as are laid in the Indictment, and therein alledg'd to be contain'd in the Petition: That it was absurd to suppose the Law should punish all manner of inordinate Speeches against his Majesty, and the Government alike, and make no Difference between Words of Inadvertency, and such as tended to High-Treason, but punish with Death the Concealers, and not Apprehenders, as well as the Authors of every trivial, unadvis'd Expression, from whence some Disrespect might be infer'd to be intended towards his Majesty and the Government.— They observe farther, that these Acts on which the Indictment was founded, were never put in Execution: And if they had, it would be hard to bring any one upon his Tryal for an Offence committed against them, after they had been long disus'd, unless there had been an Act to revive them; and that they ought to be look'd upon now as abrogated, and therefore are not sufficient to support the Indictment, or infer the Pains therein mention'd.

The Council for the Prisoner enter upon his Defence.

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Page 291.

To which the Lord Advocate reply'd, That there runs no Prescription against Laws prohibitive of Crimes, especially such as are punishable by the Civil Law, as those in the abovesaid Acts were; and that tho' this might be a sufficient Answer to what had been advanc'd on the other side, yet there were several Instances of these Laws having been put in Execution within these 34 Years.

Page 292.

But it was further alledged in behalf of the Prisoner, That the Writing mention'd in the Indictment

ment was an humble Petition and Supplication to his Majesty, and not a Libel, as the Indictment charg'd ; and that it was delivered by the Prisoner to the Earl of *Rothes*, to be presented to his Majesty : And that altho' his Majesty was not pleas'd to accept it, yet it appear'd to be a Supplication by the manner of presenting it, and by the whole Tenor of the Writing itself.

Page 295.

That the Indictment was insufficient, because the Fact was not laid to be done with a seditious and sinister Intention; or that he knew it to be seditious or infamous : But, on the contrary, the Indictment says, That the Prisoner, immediately after the Receipt of it, delivered it to the Lord *Rothes*, to be presented to his Majesty ; which clear'd the Candour of his Intention, and shew'd the Opinion he had of the Nature of the thing, and of the use he thought might be made of it to propitiate his Majesty, and not to traduce his Person or Government to his Subjects : And that the abovesaid Acts were intended only against the Contrivers and Concealer of such slanderous Writings, as were notoriously such, and compil'd and dispers'd on purpose to stir up Sedition. And farther, that the Prisoner offer'd upon Oath to aver the Innocency of his Intentions ; which, with the Circumstances above recited, ought to acquit him of the Crimes charg'd in the Indictment : And particularly, he could not be charg'd with the concealing of it, since the Indictment itself says, that he deliver'd it to the Earl of *Rothes* to deliver as an Apology to his Majesty.

Page 296.

The King's
Council reply.

To the Allegations abovesaid, the Lord-Advocate answers, that the Indictment is sufficient ; for that it hath pursued the very Words of the Act of Parliament whereon it was founded : And that the Writing is nevertheless a Libel for being put into the Form of a Supplication, the things it contains being in their own Nature scandalous and seditious. As presuming to reproach his Majesty's Person and Behaviour, his Speeches and Promises in Parliament, &c. which shew'd rather a Design to asperse his Majesty, than to deprecate his Wrath, as was pretended : And further, that the Act of Parliament has no Respect to the Intention of the Person, but does

does only expresse the Effect of the Reproaches, which tend to move dislike between his Majesty, and his Subjects.

The Prisoner's Council further alledge in his Defence, That he could not be charg'd with being the Author and Deviser of the said Libel, because he has depos'd upon Oath, that the said Mr. *William Haig* is the Author: And that the said *Haig* has acknowledged the same by a Letter under his Hand, which has been produc'd against the Prisoner.

Page 302.

That the Prisoner's interlining the said Libel could be no Argument of his contriving it, it not appearing, when it was interlin'd by him; and that in Truth those Amendments and Interlineations were made nine Months after the said Supplication was presented. And farther, that the Lords of the Committee, who took the Prisoner's Examination, had engag'd, that the said interlin'd Copy, which the Prisoner by their Order produc'd, should not be made use of against him.

Page 303.

The Lord Advocate replies; that admitting *Haig* to be the Author, there might be more Authors than one: And that in the same Letter wherein *Haig* confesses himself the Author, he says, the Prisoner was the Adviser. And that the Prisoner's Oath in a Criminal Matter can't acquit him, tho' it might in a Civil.

The Prisoner's Council say further in his Defence, That though the Prisoner were Author of the Petition or Libel aforesaid, he is not within the meaning of the abovesaid Acts; for they were made only against such Writings as were manifestly seditious and infamous Libels to every common Understanding; but that this was in a most dutiful Stile, and might be deem'd otherwise by Men of good Sense. And that though it should now be found to be such, it ought not to infer the Pain of Death upon those, who *bona fide* did not think it such: And that the Hearing, and not Revealing, ought not to be deem'd Criminal, till the Writing be first declar'd infamous and seditious. And that he ought not to be charg'd with the not Apprehending the said Mr. *Haig*, because the Apprehending intended by the Act is only where the Party has been declared to be

Page 309.

Page 310.

be the Author: And that he could not Apprehend a Person he was not assur'd, nor could prove, to be the Author, without making himself liable to a Prosecution at Law for so doing.

Page 311.

The Lord-Advocate reply'd, That the Indictment was sufficient, in that it was precisely laid according to the Words of the Act; that the Prisoner, who knew *Haig* to be the Author, did not apprehend, but conceal'd him and it, and not reveal'd them; and also gave *Haig* Opportunity to escape; and since his Escape receiv'd Letters from him: And that the Facts must be left to the Jury. That the Act did not require that the infamous Libel be so declar'd, but it was sufficient if it were really Fact: Nor could the Prisoner excuse himself from the Uncertainty and Ambiguity of it, because it was apparently, to every common Understanding, a Libel at first View; and one of the Prisoner's Quality and Learning could not be suppos'd to be ignorant of it.

Page 319.

It was said by the Prisoner's Council, that he could not be charg'd with the not revealing the Libel, because the Indictment itself says that he did reveal it to the Earl of *Rothes*, who was a Sheriff, and such a Person as the Act requir'd it to be reveal'd to.

To which the Lord-Advocate answer'd, That that being not done with a Design to have the same discover'd, or the Author prosecuted, ought still to be deemed a Concealment; and that the Prisoner was nevertheless guilty of Not apprehending *Haig*, and so had incur'd the Penalty inflicted by the Act.

Then the Prisoner's Council proceeded to shew, that the several Expressions in the Libel did not cast any Reflection on his Majesty, or the Government.

Page 121.

The Lord-Advocate answer'd, That what had been offer'd by the Prisoner's Council, either related to the Sufficiency of the Indictment, which he left to the Court, or to the Truth of the Facts, which he should leave to the Jury.

The Prisoner's Council further insisted, That the divulging this Libel could not render him obnoxious

to capital Punishment; for the Act of Parliament did not make the divulging Capital; and the Civil Law inflicted no such Punishment for divulging a Libel: To which the Lord-Advocate reply'd, that the Publishing or Divulging such a Libel was Capital by the Civil Law.

Page 323.

On the 20th of *December*, the Court being set, deliver'd their Opinions as to the Sufficiency of the Indictment.

The Prisoner's
Exceptions to
the Indictment
over-ruled.

1. And to the first Exception made by the Prisoner's Council; they rul'd, that the Acts of Parliament, on which the Indictment was founded, were still in Force, and unrepeal'd.

2. As to the second, that the Indictment had well pursued the Acts of Parliament whereon it was founded.

3. As to the third; they held, that there might be more Authors than one; and that the Words of the Act included the Adviser, Deviser and Confuter; and as to the Inferences drawn from the Prisoner's interlining of the Libel; they leave them to be consider'd by the Jury.

4. As to the fourth, they adjudg'd the Writing, mention'd in the Indictment, to be a scandalous and reproachful Libel.

5. As to the last, concerning the Divulging; they leave it with the other Facts to be try'd by the Jury; and declare, if that only should be found, that it is to be punish'd arbitrarily, at the Discretion of the Court.

On the 20th of *March* 1635, a Jury was impannel'd to try the Cause, consisting of eight Lords, and seven Commoners.

Page 324.

A Jury impan-
nel'd, consisting
of eight Lords,
and seven Com-
moners.

The Prisoner's Council objected to several of the Jury, that they had given their Opinions in the Cause already, and said, the Prisoner was Guilty; which they all discharg'd themselves of upon Oath, except one, and he was set aside.

Exception to a
Juryman, that
he had given his
Opinion before.

Then the Lord-Advocate exhibited the Acts on which the Indictment was founded, *viz.* the tenth Act of the tenth Parliament of *Jac.* VI. and the 205th Act of his now Majesty's 14th Parliament.

After which he produc'd his Majesty's Letter for the Examination of Mr. *John Dunmore*.

Then

Page 325.
The Proofs in
the Cause.

Then was read the Libel found in the Hands of the said *Dunmure*, and the other Copy of it interlin'd by the Prisoner ; with *Dunmure's* Depositions concerning the Lord *Balmerino's* delivering the same to the Deponent, and enjoining him to keep it private ; and acknowledging, that notwithstanding the Deponent made a Copy of it, which he lent to Mr. *Peter Hay* of *Naughton*, who carried it to the Lord *St. Andrews*.

Three Examinations of the Prisoners were read, wherein he says, that he had the said Supplication of Mr. *Haig*, and confesses he communicated it to the Earl of *Rothes*, and Mr. *Dunmure* ; and confesses, that he shew'd Mr. *Haig* the Warrant to convene the Deponent before the Lords ; and that he had receiv'd several Letters from *Haig* since he absconded, though the Deponent says he did not approve the said Supplication, either as to Matter or Form.

Page 327.

The Deposition of *Robert Daglish*, the Prisoner's Servant, was read, who depos'd, that he copied the said Supplication by his Master's Order ; and that at the same time he took a Copy for himself.

Page 329.

The Deposition of *Mark Cais* was also read, who depos'd, that he heard Mr. *William Haig* acknowledge, that he pen'd the said Supplication ; and that some Letters had been sent through the Deponent's Hands from Mr. *William Haig* to the Prisoner, since he absconded.

Page 330.

The Letters themselves, being produc'd by the Prisoner, were read ; they were most of them dated from *Holland*, and were written to the Prisoner to desire him to use his Interest to put an End to the Troubles the said *Haig* underwent upon Account of his penning the said Petition, and his Lordship's communicating it to the said *Dunmure*.

Page 331.

The Earl of *Rothes's* Deposition was read, importing, That he received the said Supplication from the Lord *Balmerino*, to be communicated to his Majesty, but that he always thought it ought to be suppress'd ; and that he was not advis'd with concerning the composing or penning of it.

The Prisoner's
Council object
to the Proofs.

The Council for the Prisoner said, it was not prov'd, that the Prisoner was either the Author or Adviser of the Supplication : That his interlining of
it

it must be afterwards, because it could not be suppos'd he would present an interlin'd Copy to his Majesty ; and because that the Copy in Mr. *Dunmure*'s Hands had not these Amendments and Interlineations in it.

Besides that, the Matter interlin'd was not reproachful or scandalous, and so it cannot be said he advis'd any thing scandalous. And further, that it had never been seen by any Man since it was interlin'd, and so could not support the Charge in the Indictment ; for that even an infamous Libel found upon one who suppress'd it, and never publish'd it, does not make him guilty of an infamous Libel.

It was further urg'd by the Prisoner's Council that his Confession before the Lords ought not to be urg'd against him : But if it was, it ought not to be taken partially, but entire, and then it will appear, that the Prisoner had no Hand in the framing it. Nor could the giving it his Servant to copy, or his advising with *Dunmure* about it, whom he enjoin'd to conceal the Matter, be deem'd a Publication, or divulging of it.

Page 333.

The Jury having withdrawn, and consider'd of their Verdict, return'd again into Court : They declar'd, that they acquitted the Prisoner of being the Author or Adviser of the said Supplication ; as also of the Not Apprehending the said *William Haig*. And they acquit him of divulging and dispersing of the said Libel ; but found him guilty of the hearing of the said infamous Libel, and the concealing, and not revealing of the said Mr. *William Haig*, whom he affirm'd to be the Author of it.

The Prisoner
convicted of
concealing *Haig*
the Author.

Then the Lord Justice-General, by the Advice of the Assessors, declar'd, That the said *John Lord Balmerino*, being convicted of the Hearing of the said infamous Libel, and concealing, and not revealing Mr. *William Haig* the Author, and Penner thereof, had incur'd the Pain of Death by the said Acts of Parliament.

And receives
Sentence of
Death.

But suspended the Execution of the Sentence until his Majesty's Pleasure should be known.

But Execution
is respited till
his Majesty's
Pleasure is
known.

The Tryal of THOMAS Earl of Strafford, and Lord-Lieutenant of Ireland, who was impeach'd of High-Treason by Mr. Pym, at the Bar of the House of Lords, on the 11th of November, 16 Car. I 1640. And brought upon his Tryal the 22d of March following.

Taken from RUSHWORTH.

*Rushworth's
Strafford.*

Page 1.

Some Occur-
rences previous
to the Impeach-
ment.

Page 2.

Page 3.
The Earl im-
peach'd of High
Treason gene-
rally.

And committed.

ON the sixth of November 1640, Complaints being made in the House of Commons of Male-Administration in the Government of *Ireland*: After a long Debate the Question was put, Whether the *Irish* Affairs should be refer'd to a Committee of the whole House? And it was carried in the Affirmative, Yea's 156, No's 152. Upon this the Earl of *Strafford's* Friends sent him Word they apprehended a Design against him, and advis'd him to strike first, and come up and impeach some Members of both Houses, of inviting the *Scots* into the Kingdom; or else to remain at the Head of his Army, if he thought that would conduce most to his Security. The Earl having good Evidence that some of the *English* Members of both Houses had invited the *Scots* into this Kingdom, came immediately up to Town, with an Impeachment almost fram'd against them, in order to lay it before the Lords: But his Enemies in the House of Commons were before-hand with him, and on the 11th of November resolv'd on an Impeachment of High-Treason against him, which was carried up to the Lords by Mr. *Pym* in general Terms. And they further desir'd, that the Earl might be sequester'd from Parliament, and committed to Prison, promising to exhibit Articles against him in convenient time: Whereupon the Lords sequester'd him from the House, and committed him to the Custody of Mr. *James Maxwell*, Usher of the Black Rod.

When

When the Earl was first order'd to withdraw, it was debated, Whether he ought to be imprison'd on a general Impeachment? And it was carried in the Affirmative. And the Earl was call'd in again to the Bar, and being made to kneel, after he rose up, the Lord-Keeper acquainted him with their Resolution for his Commitment.

Page 4.

The House of Commons made an Order the 18th of November, That none of their Members should visit the Earl, without Leave of the House.

Page 6.
Members prohibited to visit the Earl.

The Commons sent a Message the same Day to the Lords, to desire them to appoint a Committee to take the Depositions of such Witnesses as the Commons should think fit to examine against the Earl, and that the Members of the House of Commons might be present; and that the Proceedings at their Examination might be kept private. And that the Members of the Lord's House, whom they should call as Witnesses, might be examin'd upon Oath, as they had ordered their own Members to be; and that the Members of the Privy-Council might be examin'd as Witnesses also.

Page 7.
A Committee of Lords appointed to take Depositions against the Earl, in the Presence of a Committee of the Commons.

And to these Particulars the Lords agreed.

On the 25th of November, Mr. Pym was order'd to carry up nine general Articles against the Earl of Strafford, which he carried up accordingly, and are in Substance as follow, viz.

Page 8.
Nine general Articles prefer'd against him.

Art. 1. That he had traiterously endeavour'd to destroy the Constitution, and introduce an Arbitrary Government both in *England* and *Ireland*.

2. That he had traiterously assum'd Regal Power in both Kingdoms, and tyrannically exercis'd the same, to the undoing of many of the Peers and others.

3. That he had detain'd great part of his Majesty's Revenue, and taken great Sums out of the *Exchequer*, which he had converted to his own use.

4. That he had abus'd his Authority by countenancing and encouraging of Papists.

5. That he had endeavour'd to create Hostilities between the Subjects of *England* and *Scotland*.

6. That being Lieutenant-General of the Army, he had betray'd his Majesty's Subjects to Death, and his Army to a shameful Defeat at *Newborne*, by

the Scots, and suffer'd the Town of *Newcastle* to fall into their Hands, to the End *England* might be engag'd in an irreconcilable Quarrel with the Scots.

Page 9.

7. That he endeavour'd to incense his Majesty against Parliaments, and thereby to create Divisions between his Majesty and his People, and to ruin and destroy these Kingdoms ; for which they impeach him of High-Treason.

8. And that he was Lord-Deputy of *Ireland*, and Lieutenant-General of the Army in *England* and *Ireland*, and Lord-President, and Lieutenant-General of the North, when the Crimes in the fifth and sixth Articles were committed.

9. The Commons, saving to themselves the Liberty of exhibiting any other Accusation, &c. pray that the said Earl may be put to Answer the Premises, to the End such Tryal and Judgment may be had, as is agreeable to Law and Justice.

Page 16.
Secret Committee.

On the 4th of *December* 1640, those eight Members that were appointed to attend the Committee of Lords at the Examination of the Commons Witnesses, were order'd to make Protestations, that they would keep those Examinations secret, which they made accordingly.

Page 20.
Special Articles.

On the 30th of *January* 1640, twenty eight other special Articles of Impeachment against the Earl of *Strafford* were sent up to the Lords by Mr. *Pym*.

Page 22.

Tuesday, *February* 23, being the Day appointed for the Earl of *Strafford* to give his Answer to the twenty eight special Articles, he gave it in accordingly.

Page 32.
Issue join'd.

The Commons resolve not to reply, but join Issue upon the Answer.

Page 40.
Managers for
the Commons.

The Tryal being appointed to be in *Westminster-Hall*, on *Monday* the 22d of *March*, Scaffolds were erected there for that purpose, and the Commons appointed the following Members to be Managers ; *George Lord Digby*, *John Hampden Esq*; *John Pym Esq*; *Oliver St. John Esq*; afterwards *Solicitor-General*, *Sir Walter Earl*, *Jeoffery Palmer Esq*; afterwards *Attorney-General* to King *Charles II*, *John Maynard Esq*; afterwards *Serjeant at Law* to King *Charles II*, *John Glyn Esq*; *Recorder of London*, and afterwards one of the Council to King *Charles II*.

Monday,

Monday, March 22, 1640. The Lords having Tryal begins.
taken their Places in *Westminster-Hall*, and the Commons being seated as a Committee, uncover'd; and the Managers at the Bar, Sir *William Balfour* Lieutenant of the Tower was commanded to bring forth his Prisoner; and accordingly the Earl of *Strafford* was brought to the Bar; and the Lord High-Steward acquainting him that their Lordships would hear both his Accusation and Defence with all Equity, order'd the Impeachment to be read; and a Chair was brought for the Lord *Strafford* while it was reading: Afterwards the Earl's Answer was read.

The Substance of the said 28 special Articles and Answer are as follow, viz.

(Article 1.) That the said Earl of *Strafford*, being President of the North, did on the 21st of March, in the eighth Year of the King, procure a Commission, with divers Schedules of Instructions annexed, to be directed to himself and others, empowering them to hear and determine all Misdemeanors, Offences, &c. within certain Precincts in the North: And that among other Instructions, they were appointed to proceed according to the Course of the Star-Chamber, against divers Offences: And that they were also thereby empower'd to proceed according to the Course of the Court of Chancery, as well concerning Freehold and Copyhold Lands, as Leases, &c. and to grant Injunctions to the Courts of Common Law, as is used in Chancery. And that altho' no other President ever had or put in practice such Instructions, The said Earl had exercised these Powers over the Persons and Estates of several, and depriv'd them of their Estates and Possessions, and fin'd and imprison'd them to their utter Ruin; and particularly Sir *Conyers Darcy* and Sir *John Boucher*. And that the said Earl did procure Directions to be given that no Prohibition should be granted, but where they exceeded the Limits of their said Instructions; and that none should be discharg'd on a *Habeas Corpus* till they had perform'd their Decrees. And that in the 13th Year of the King, the said Earl procur'd

Page 61.
The Substance
of the 28 special
Articles.

a new Commission with the like Instructions, and other unlawful Additions.

Page 62.

(2.) That on the last Day of *August*, after the Date of the said first Commission, he said publickly at the Assizes at *York*, That some of the Justices of Peace were all for Law; But they should find the King's little Finger to be heavier than the Loins of the Law, in order to terrify the Justices of Peace from executing the Laws, &c.

(3.) That the Realm of *Ireland* being annexed to the Crown of *England*, and govern'd by the same Laws, The said Earl being Lord Deputy there, did on the 30th of *December*, in the 9th Year of the King, in a Speech to the Nobility and Gentry, and to the Corporation of *Dublin*, declare that *Ireland* was a conquer'd Kingdom, and that the King might do with them what he pleas'd: And that the Charters of *Dublin* were nothing worth, and did bind the King no farther than he pleas'd.

Page 63.

(4.) That *Richard* Earl of *Cork* having taken out Procefs for Recovery of his Possessions, from which he was put by an Order of Council, *Strafford* did, on the 20th of *February*, in the 11th Year of the King, threaten to imprison him if he did not surcease his Suit; and said he would have neither Law nor Lawyers dispute his Orders. And that on the 20th of *March* following he took occasion to say, He would make the said Earl of *Cork* and all *Ireland* know, That as long as he had the Government, an Act of State should be as binding to the Subjects of that Kingdom as an Act of Parliament.

(5.) And that accordingly he did exercise a Power, to the Subversion of the Laws of that Kingdom, upon the Goods, Inheritances, Liberties and Lives of the Subjects; particularly that on the 12th of *December* 1635, he did, in time of full Peace, procure to be given against the Lord *Mountnorris*, then Secretary of State, &c. a Sentence of Death, by a Council of War, without any Offence deserving such Punishment. And in the 14th Year of the King, without any legal Tryal, did cause Sentence of Death to be given against another at *Dublin* (whose Name is yet unknown) and caused him to be executed accordingly.

(6.) That

(6.) That on a Paper Petition of *Richard Rolston*, he caused the said Lord Mountnorris to be dis-seiz'd of his Manor of *Tymore*, of which he had been in possession 18 Years.

(7.) That in *Trinity Term*, in the 13th Year of the King, he caused a Case, call'd *The Case of Tenures upon defective Titles* to be drawn up, whereon he procured the Resolutions of the Judges; and by colour of that Resolution, without any legal Process, caused *Thomas Lord Dillon* to be dis-possess'd of divers freehold Lands and Tenements; and also divers others to be dis-seiz'd of their Freeholds, whereby many hundred Families were ruined.

(8.) That on the first of *February*, in the 13th of the King, upon the Petition of *Sir John Gifford*, he made an Order against *Adam Viscount Loftus* Lord Chancellor of *Ireland*; and on pretence of Disobedience to the said Order, caused him to be imprison'd: — That without any Authority he commanded the said Lord to yield up the Great Seal, and imprison'd him for not obeying his Command.

— That in the same 13th Year he illegally imprison'd the Earl of *Kildare*, in order to make him submit his Title to the Manor of *Castle-leigh* to his Pleasure, and kept him a Year Prisoner for this Cause, and refused to enlarge him, tho' directed to do it by his Majesty's Letters — That upon a Petition to him, by *Thomas Hibbotts* against *Dame Mary Hibbotts*, which he refer'd to the Council, altho' a major Part of them were for the Lady, he caused an Order to be enter'd against her, and so threatned her if she did not submit to it; that she was forc'd to relinquish her Estate in the Lands mention'd in the Petition, which were soon after convey'd to *Sir Robert Meredith* to the use of himself. — And that he imprison'd divers others, on pretence of Disobedience to his Orders, for pretended Debts, Titles to Lands, &c. in an arbitrary extrajudicial Course, upon Paper Petitions prefer'd to him.

(9.) That in the 12th Year of the King, he took upon him to grant a general Warrant to the Bishop of *Down* and *Connor*, and to several other Bishops and their respective Chancellors and Officers, to arrest

arrest and commit to Prison such of the meaner sort as should omit to obey their lawful Decrees, until they perform'd them, or put in Bail, to shew the reason of their Neglect before the Council.

(10.) That being Lord Deputy of *Ireland* in the Ninth Year of the King, he farm'd the Customs; and to advance his own Gain, he caused the native Commodities to be over-rated in the Book of Rates; and the Customs which were before but a twentieth Part of the Value of the Commodity, were now some of them a fourth, some a fifth, and some a third Part of the Value, to the Ruin of Trade.

Page 66.

(11.) That also for his own Lucre, he restrain'd the Exportation of divers Commodities, and then extorted great Sums for Licences to export them.

(12.) That the Ninth of *January*, in the 13th of the King, he issued a Proclamation in his Majesty's Name, prohibiting the Importation of Tobacco; and then caused great Quantities to be imported to his own Use. And where any Ships refused to let him have the Tobacco they brought at his own Price, they were not permitted to vend it. And the better to serve the said Monopoly, he issued out another Proclamation, directing all Tobacco to be seiz'd that was not seal'd by his Agents; and 6*d.* per Pound as a Reward to him that should seize it; and those on whom such unseal'd Tobacco was found, were fin'd, whip'd, imprison'd, or set in the Pillory, by which Means he gain'd 100000*l.* And tho' he enhanc'd the Customs in other Cases, he lessen'd them in this, from 6*d.* per Pound to 3*d.* to his own Profit. And that by the same, and other undue Means, he made several other Monopolies.

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(13.) That in the 12th Year of the King, he issued two Proclamations, enjoining the *Irish* to work all their Flax into Yarn and Thread, in a manner in which the Natives were unskill'd; and the Flax not wrought as he prescrib'd was seiz'd by his Agents; and thereby he gain'd the sole Sale of that native Commodity.

(14.) That he, by Proclamation, in the 14th Year of the King, impos'd an unlawful Oath on the Owners, Masters, &c. of all Ships arriving at any Port

Port in *Ireland*; to give an Account of their Landing, the Place from whence they came, their respective Owners, and whither they were bound.

(15.) That the said Earl, traiterously contriving to bring the Realm of *Ireland* under his Tyranny, did, in the Eighth Year of the King, by his own Authority, impose great Sums of Money upon the Town of *Baltimore*, and divers other Places, and caused the same to be levy'd in a warlike Manner, by Troops of Soldiers; and that in the 12th Year of the King, he authoriz'd *Robert Savil* Serjeant at Arms, and several Captains, to quarter Soldiers upon several of the Inhabitants, who would not conform to his Orders; and by such warlike means compel'd them to submit to his unlawful Commands. And in like manner expel'd *Richard Butler* from his Manor of *Castle-Cumber*: And also *Edward Obrenman* and others, to the Number of 100 Families, he expel'd from their Possessions, and carried them and their Wives to *Dublin*, and imprison'd them till they surrender'd or releas'd their respective Estates; whereby he hath levy'd War within the said Realm, against his Majesty and his liege People of that Kingdom.

(16.) That in order to oppress the Subjects of *Ireland*, he obtain'd of his Majesty, That no Complaints should be receiv'd in *England* against any, unless it appear'd the Party had first apply'd to the said Earl. And that the said Earl, the better to maintain his Tyranny, did make use of his Majesty's Name, in his Oppressions aforesaid. And that to prevent any Complaints to his Majesty, he issued a Proclamation in the 11th Year of the King, forbidding all who held Estates and Offices in the Kingdom, to depart the Kingdom without his Licence; and that accordingly he imprison'd several who came over to complain, particularly one — *Parry*.

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(17.) And that having thus subverted the Government in *Ireland*; he did, to the scandal of his Majesty, affirm, That his Majesty was so well pleased with his Army there, and the Consequences thereof, that he would make the same a Pattern for all his three Kingdoms.

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(18.) That

(18.) That the better to effect his traiterous Designs, he endeavour'd to make the Papists in both Kingdoms depend upon him. That he restor'd several religious Houses to the pretended Owners; and particularly two in *Dublin*, which had been assign'd to the use of the University there; and that they were now employ'd to the Exercise of the popish Religion. That in *May* and *June* last, he rais'd an Army of 8000 Men, of which 7000 were Papists. That the other 1000 Protestants were drawn out of the old Army consisting of 2000 Foot, and their Rooms were supply'd by 1000 Papists. That to engage the new Army of Papists to him, they were duly paid, and permitted the Exercise of their Religion; and that to discourage the old Army, they had no Pay for a whole Year. That the said Earl being a Commissioner in the Eleven Northern Counties of *England*, for compounding Forfeitures for Recusancy; to engage the said Recusants to him, he compounded with them at very low Rates, and discharg'd them from all Proceſs against them.

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(19.) That the said Earl having exercised the abovesaid Oppressions in *Ireland*, in his Majesty's Name, and as by his Majesty's Command, did on the 15th of the King, impose an Oath, whereby the Party was to swear he would not protest against any of his Majesty's Commands, but submit obediently thereto. And that he enforced several of the *Scottish* Nation inhabiting in *Ireland* to take it, in order to breed a Discontent amongst them; and that the Refusers he fin'd, imprison'd and exil'd, particularly he fin'd *Henry Steward* and his Wife 5000 *l.* a piece, and imprison'd them for Non-payment. And that the said Earl declared, that the said Oath did not only oblige them in point of Allegiance, and Acknowledgment of the Supremacy, but to the Ceremonies and Government of the Church establish'd, or to be establish'd by his Majesty; and gave out that those who refused to take it he would prosecute to Blood.

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(20.) That in the 15th and 16th Years of the King, and for divers Years past, he had endeavour'd to create in his Majesty an ill Opinion of the *Scots*; and,

and, since the Pacification, excited his Majesty to an Offensive War against them : That he was the principal Incendiary, and had declar'd, that the *Scots* Demands in Parliament were a sufficient Cause to make War upon them : That he had said the Nation were Rebels and Traitors : And that, if his Master pleas'd, he would root them out of the Kingdom of *Ireland* both Root and Branch, except such as had taken the Oath in the preceding Article : And that he had caus'd several *Scots* Ships to be seiz'd to set on Foot the War.

(21.) That having incited the King to break the Pacification, and make an Offensive War upon *Scotland*, and to raise Forces under Colour thereof, he advis'd his Majesty to call a Parliament, intending nevertheless, if they did not concur in his mischievous Projects, to have them dissolv'd, and Money rais'd upon the Subjects by Force : And that to encourage his Majesty to hearken to this Advice, he declared before the King in Council, That he would serve his Majesty any other way, in case the Parliament did not supply him.

(22.) That he procured the Parliament of *Ireland* to declare their Assistance in a War against the *Scots*, and directed an Army of 8000 Foot, and 1000 Horse, to be rais'd there, most Papists ; and did traiterously conspire with Sir *George Ratcliff* to employ the said Army to the Subversion of the Government of this Kingdom of *England* : And that he declar'd, if the Parliament would not supply his Majesty, he might use his Prerogative to levy what he needed ; and that he would be acquitted both by God and Man for so doing.

(23.) That the last Parliament, at their Meeting, taking into their Consideration the Grievances of the Kingdom, in respect to Religion and the publick Liberty : And his Majesty referring every thing to the said Earl, and the Archbishop, concerning the said Parliament, they procur'd his Majesty, by sundry Speeches and Messages, to urge the Commons to grant a Supply for the War against *Scotland*, before they enter'd on their Grievances. And that a Demand being made by his Majesty of twelve Subsidies for the Release of Ship-Money, while

while the Commons were debating concerning the Supply, the said Earl, with the Archbishop, procur'd his Majesty to dissolve the Parliament on the fifth of *May* last; and the said Earl did then incense his Majesty against the Members, by telling him they had denied to supply him: And did then also advise, that his Majesty, having tried the Affections of his People, and been refus'd, he was absolv'd from all Rules of Government; and that he had an Army in *Ireland*, which he might employ to reduce this Kingdom.

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(24.) That he falsly declar'd to others of the Privy-Council, that the Parliament had forsaken the King; and that denying him a Supply they had given him Advantage to supply himself by such other ways as he thought fit; and that he was not to suffer himself to be master'd by the Frowardness of the People: That the Earl, with the Archbishop and Lord-Keeper *Finch*, had publish'd a scandalous Book in his Majesty's Name, entituled, *The Causes that mov'd him to dissolve the Parliament*, full of bitter Invectives against the Commons.

(25.) That he advis'd his Majesty to levy Ship-Money, and procur'd the Sheriffs to be prosecuted in the Star-Chamber for not levying it, and several to be imprisoned for not paying it: That he advis'd, that the Lord-Mayor, &c. should be summon'd before the Council to give an Account of their Proceedings in raising Ship-Money, and concerning the Loan of 100000*l.* which the King demanded; and that they refusing to certify who were fit to lend, the Earl said they deserv'd to be fin'd, and no good was to be done with them till they were laid by the Heels, and some of the Aldermen hang'd up.

(26.) That he advis'd and procur'd 130000*l.* that belong'd to Merchants, Strangers, and others, to be seiz'd in the Mint to his Majesty's Use: And when it was represented to him what a Prejudice it would be to the Kingdom, he said, that the City of *London* had dealt undutifully, and were readier to help the Rebels than his Majesty; and that it was the Course of other Princes to use such Money to serve their Occasions. — And that the Officers of
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the Mint, giving him some Reasons against debasing the Coin, as the Earl had advis'd; he said, that the *French* King us'd to send Commissaries of Horse to take Account of Mens Estates, and levy Money of them by Force: And said to my Lord Cottington, then present, that this was a Course worthy to be consider'd by his Lordship.

(27.) That being Lieutenant-General of the Forces in the North, while he was at *York*, by his own Authority he impos'd a Tax on that Country of 8 *d. per Diem*, for the Maintenance of every Soldier of the Militia, and levy'd it by Force; and declar'd, that they who refus'd, were guilty of little less than High-Treason.

(28.) That in *September* and *October* last, being certified of the *Scots* Army's Coming into *England*, he did not provide for the Defence of *Newcastle*, but suffer'd it to fall into their Hands, the more to incense the *English* against the *Scots*: And in order to engage the two Nations in a bloody War, he order'd the Lord *Conway* to fight the *Scots* at the Passage of the *Tine* whatever follow'd, tho' the Lord *Conway* had before acquainted him, he was not of Force sufficient to encounter them; whereby he did, contrary to his Duty, betray his Majesty's Army to apparent Danger and Loss. All which Words, Councils and Actions of the Earl were done with an Intent to create a Division between his Majesty and his People, and to destroy his Majesty and his said Kingdoms; for which they did further impeach him of High-Treason.

ANSWER to the twenty eight special Articles.

(1.) To the first he says the Commission and Instructions did not differ from those formerly granted; and that if any Addition or Alteration were, it was rather for explaining than enlarging the Jurisdiction; and that the framing of them was left to the King's Council: That the legal Part was directed by the Lawyers who were in Commission with him. He believes Sir *Conyers Darcy* was legally fin'd, as was Sir *John Boucher*, for some great Abuse at the King's being at *York* (tho' the President was then in *Ireland*); and denies he did any thing

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The Earl's Answer to the 28 special Articles.

thing but what he conceiv'd he might lawfully do by Vertue of that Commission.

(2.) To the second, he denies the speaking those Words, but that he said on a certain occasion, *That the little Finger of the Law was heavier than the King's Loins.*

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(3.) To the the third, That all the other Laws and Customs of *Ireland*, but the Common Law, are very different from *England*; but he spoke not the Words with the Intent he is charg'd, though it might be fit to remind them of the Obligations they had to the King, and his Progenitors, who suffer'd them to enjoy Freedom and Laws, as this Kingdom, although they were a conquer'd Nation. And he might say the Charters of *Dublin* did not bind his Majesty, having been inform'd so by his Majesty's Council.

(4.) To the fourth, That the Proceedings at the Council-Table there have ever been by Petitions, Answers and Examination of Witnesses, as in other Courts, concerning *British* Plantations, the Church, and Cases, recommended by the King, and in Appeals from other Courts there; and they have always punish'd Contempt to their Orders, &c. by Fine and Imprisonment. And believes he might tell the Earl of *Cork*, he would imprison him, if he disobey'd the Orders of the Council Table; but remembers not the Comparison of Acts of Parliament to Acts of State. That the Suit against him was concerning the Possessions of the College of *Youghall*, which the Earl of *Cork* had endeavour'd to get by very ill Means: And that on Payment of 15000*l.* to his Majesty, and acknowledging his Misdemeanors, he had a Pardon. And that he remembers no Suit for Breach of any Order of the Council-Table.

(5.) To the fifth, That the Deputies and Generals of the Army have always executed Martial Law, and the Army has been long govern'd by printed Orders; And the Lord *Mountnorris*, being a Captain in the Army, for mutinous Words against the Earl, and Breach of two of those antient Orders, was sentenc'd to Death by a Council of War, consisting of twenty of the principal Officers, where-
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in the Earl was no Judge ; but afterwards procur'd his Pardon ; and the Lord Mountnorris suffer'd no Personal Damage, save about two Days Imprisonment. As to other Persons he cannot Answer, none being specified.

(6.) To the sixth, That the Suit having long depended in *Chancery*, the Earl, upon the Plaintiff's Petition, complaining of Delay, did, as is usual in such Cases, call to his Assistance the then Master of the *Rolls*, the now Lord-Chancellor, &c. and upon the Proofs in *Chancery* decree for the Plaintiff, and the Lord Mountnorris might thereupon be put out of Possession.

(7.) To the seventh, That the Lord Dillon having a defective Patent, consented to the stating that Case which the Judges deliver'd their Opinions upon ; but that neither he, nor any other were bound by it, or put out of Possession thereupon.

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(8.) To the eighth, That on Sir John Gifford's Petition to the King, it was refer'd to the Council of *Ireland*, and a Decree there had against the Lord Loftus : And on an Appeal to the King and Council in *England*, that Decree was confirm'd ; and for Disobedience to that Decree, and Continuance in Contempt, he was committed close Prisoner. That the Great Seal was delivered up by his Majesty's Command, and not otherwise : And that an Information being exhibited against the Lord Loftus in the Star-Chamber for his Oppressions as Chancellor, he submitted, desiring he might be an Object of his Majesty's Mercy. — That the Earl of Kildare, for not performing an Award made by King James, and an Award, in Pursuance thereof, by the Earl of Strafford, was committed ; and a Letter being unduly obtain'd, he was not enlarg'd thereupon ; but upon another Letter, and his Submission, he was enlarg'd. — That the Lady Hibbotts, and Hoy her Son, having been found fraudulently to have made a Bargain with the Petitioner Hibbotts for Lands of a great Value, for a small Sum of Money, was order'd by the Council to deliver up the Writings, no Assurances being made, or Money paid ; and believes she might be threaten'd to be committed, if she disobey'd that Order ; but denies the Lands were

were sold to Sir Robert Meredith for his Use ; or that by any Order made by himself, any one had been imprison'd in a Case of Freehold, but admits they may have been for Debts and personal Things, as has been us'd by his Predecessors.

(9.) To the ninth, That Warrants to that Effect have been granted to Bishops by his Predecessors, but that he never granted but one, which was to the Bishop of *Down* ; and hearing some Complaints of the Execution of it, he recall'd it.

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(10.) To the 10th, That the Lord Treasurer *Portland* offer'd the Farm of Customs for 13000 *l. per Annum*, and the Earl had advanc'd them to 15000 *l. per Annum*, and 8000 *l. Fine* ; that, by his Majesty's Command, he became a Farmer, at those Rates without Addition, as by the printed Books of 7 *Car.* might appear ; That he dissuaded the Advance of the Rates, and accordingly it was declin'd ; and that the Rates of Hides and Wool are moderate : And the Trade and Shipping of the Kingdom is mightily increas'd.

(11.) To the 11th, That Pipe-Staves were not transported without Licence in King *James's* Time, and 6 *s.* 8 *d.* *per* 1000 us'd to be paid to the Lord-Deputy, and 3 *s.* 4 *d.* to his Secretary for the Licence ; but that his Majesty, to restrain the Destruction of Timber, had laid first 30 *s.* then 3 *l.* *per* 1000 upon them, which was paid to his Majesty, and amounted to 1500 *l. per Annum* ; but the Earl had lost 4 or 500 *l. per Annum* by it, which his Predecessors had for Licences ; and that the Duty was paid by the Exporter, and not by the Natives.

(12.) To the 12th, he saith, That the Revenue of the Kingdom falling short of the Expence 24000 *l.* the Commons petition'd (10 *Car.*) that the Duties on Tobacco might be applied to increase his Majesty's Revenue: Whereupon Proclamations were issued, and it was settled in a way till it could be confirmed in Parliament ; for which purpose a Bill was transmitted from *England*, and the Impost on Tobacco let to Contractors for 11 Years at 5000 *l. per Annum* for the first five Years, and 10000 *l. per Annum* for the other six ; and that the Earl had lent Money to forward

ward the Business, and, by his Majesty's Allowance, was a Partner ; but he had not yet made any Advantage thereby ; that he knew of no Whipping or other Punishment for Non-payment of the Duties ; and that the Farms of the Customs were advanced 2000 *l. per Annum*, and five eighths : That the Price of Tobacco was not above 2 *s.* 4 *d.* *per Pound* ; and that he had not rais'd or countenanc'd any Monopoly.

(13.) To the 13th he saith, That he chose to advance the Linen-Manufacture there, rather than the Woollen ; because that might prejudice the Trade here : That he had imported great Quantities of Flax, and sold it at the same Rates, to encourage the Natives, the Soil being very fit for it : That he had set up many Looms, and sold much Cloth to loss ; but when he found the Natives would not be brought to change their old Courses for better, the thing was declin'd

(14.) To the 14th he saith, That that Proclamation was set forth by the Council of State, to prevent Frauds in the King's Duties ; and the Oath enjoin'd he conceiv'd to be lawful, it being approv'd of by the Judges ; to whose Judgment, for the Legality of it, he refer'd himself.

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(15.) To the 15th Article he saith, That he denies what is therein charg'd upon him ; but saith, that in the Year 1626, certain Agents, authoriz'd in *Ireland*, were sent into *England*, and offer'd and agreed to pay to his Majesty 120,000 *l.* in six Years, towards the Maintenance of his Army : And it was agreed between them, and the Lord *Falkland* then Deputy, That the Money should be levy'd by Captains, by Paper-Assignments upon Warrants from the Lord-Deputy : That this Course was held four Years in the Lord *Falkland's* Time, and four Years more when the Lord *Loftus*, and the Earl of *Cork* were Lords-Justices ; and it was continued only the remaining Year after the Earl of *Strafford* came thither ; and he is confident that no Force was us'd in levying it during his time. And that neither *Richard Butler*, nor any other Family, were expel'd by the said Earl from their Estates.

(16.) To the the 16th he acknowledges, there was such a Proposition made, as is mention'd in the Article, and he conceiv'd it to be just, to prevent clamorous Complaints that might be redress'd there: And says, that, by the Laws there, none ought to depart the Kingdom without Licence. However, that he denied Licence only to three (*viz.*) the Earl of *Cork*, the Lord *Montnorris*, and Sir *Frederick Hamilton*: to the two first in regard of Criminal Suits against them; and to the other, by special Command from his Majesty: And that when Sir *Frederick* intimated he had a Complaint against the Earl himself, he intreated his Majesty he might come over, and it was granted; and he conceiv'd this Restraint to be necessary in that Kingdom. That *Parry* being questioned at the Council-Board, fled the Kingdom; and at his Return, for that, and other Offences, was fin'd and imprison'd, and refers himself to the Sentence: But knows of no other imprison'd, as is charg'd in this Article.

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(17.) To the 17th he says, It is possible he might say to the Soldiers of the old *Irish* Army, that his Majesty was so well pleas'd with the manner of exercising their Arms, that, in that Respect, he would set them as a Pattern for others to imitate.

(18.) To the 18th he saith, that when the Earl of *Cork* was one of the Lords-Justices, he seiz'd some Houses in *Dublin*, on Pretence of their belonging to Jesuits and Friars, without legal Process: Whereupon Suits being commenc'd for them at the Council-Board, they were restor'd to the Owners; but how they have been employ'd since, the Earl knows not. That as to the raising the 8000 Men, according to the King's Warrant, he left the Care of it to the Earl of *Ormond*; and believes such a Body could not be rais'd without many Papists, but the greatest Part of the Officers were Protestants; and that in the old Army he never made an Officer who was not a Protestant; and he gave Directions that the common Soldiers therein should be all such; and believes they have been duly paid: And that those who are new rais'd, do exercise their Religion in no other manner than was practis'd before
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the Earl came thither. — That when he was a Commissioner, to compound with the Recusants for their Forfeitures, in four Years he brought that Revenue from 2300 *l.* to 12000 *l.* *per Annum*: And that they had no other Privileges, than they had formerly, and such as are in the present Commission to the Lord-Treasurer, and others.

(19.) To the 19th he saith, That the *Scots* in *Ulster* being near 100,000 Men, and it being apprehended they might be drawn to side with the Covenanters, the Oath mentioned in the Article was tender'd to them, and chearfully taken by the *Scotch* Gentlemen, and generally by all that Nation in *Ireland*, though some were sentenc'd for refusing it: And that the Earl did say, he would endeavour that all that Nation should take the Oath, or leave the Kingdom, as his Majesty had directed: And that it was not contriv'd to the Intent charg'd in this Article; or concerning the Government of the Church.

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(20.) To the 20th he saith, That in the Year 1639, he held it fit that an Army should be rais'd in *England* against the Covenanters, but that he advis'd his Majesty to call a Parliament: That before the Sitting thereof the *Scots* Demands being consider'd in Council, it was unanimously voted they were such as might not in Honour or Safety be granted by his Majesty; and if they could not be otherwise reduc'd, his Majesty must do it with Force; and it was held necessary to borrow 200,000 *l.* till the Supplies by Parliament came in: That he never said that the *Scotch* Nation were Rebels; but might say, that those who rais'd Arms when they were at such a distance from his Majesty, were no less than Rebels and Traitors: That indeed by Warrant from the Lord-Admiral, he caus'd several Ships to be seiz'd, but it was in order to bring things to an Accommodation.

(21.) To the 21st, That the Pacification was broken before he came over: That he mov'd his Majesty for a Parliament in hopes of settling a right Understanding between the King and his People; and not with such an Intent as is suggested in this Article: And he might say, that if the

Parliament would not Supply his Majesty, he would serve him in any other lawful way, but he did not remember the Expression.

(22.) To the 22d he saith, That, pursuant to his Majesty's Instructions, he did represent the State of Affairs to the Parliament in *Ireland*, and they freely gave four Subsidies : That he did also, by his Majesty's Directions, raise 8000 Men, who were sent into *Ulster* to secure those Parts ; or to land in *Scotland* to divert the Earl of *Argyle*, in case he join'd the Covenanters : But he denies the Words charg'd in this Article, or any other to that Effect.

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(23.) To the 23d he saith, That the Matters in Parliament were no more refer'd to him, than to the rest of the Council : And that it being debated, what might move the Parliament to supply his Majesty, he advis'd his Majesty to lay down Ship-Money, and promise never to demand it, and let the Judgment given in it be revers'd in Parliament, and promise a Redress of Grievances : And desire that they would presently agree upon a Supply for reducing the *Scots* : And the Earl desir'd his Majesty to accept of eight Subsidies : And this Message the Earl drew up in Writing, and delivered to Sir *Hen. Vane*, to deliver to the House of Commons ; but whether Sir *Henry* delivered it or no, he knows not. That the House of Commons, being in Debate two Days, and not resolving his Majesty ; about the fifth of *May* the King call'd a Council, and the Earl coming in late, was told he had declar'd his Resolution to dissolve the Parliament. That Sir *Hen. Vane* said there was no Hopes the Parliament would give the King a Penny ; and the Earl then apprehending the abovesaid Message had been delivered to the House of Commons by Sir *Hen. Vane*, he did in his Turn deliver his Vote for Breach of the Parliament, as Sir *Hen. Vane* had done ; and the rest of the Lords, being about twenty, excepting only two or three at the most. — That the Parliament being dissolv'd, and the King desiring Advice of his Council how Money might be rais'd, and affirming, that the *Scotch* Army was ready to enter the Kingdom, the said Earl did deliver his Opinion, that in Cases of absolute, and unavoidable Necessity,

Necessity, his Majesty was absolv'd from ordinary Rules, and might use all Ways and Means for Defence of himself and Kingdom ; for that he conceiv'd, in such Extremity, *Salus Populi* was *Suprema Lex*. But that when a Peace was settled, Satisfaction ought to be given to particular Men : However, that this was not officiously declared, but in Council, being compel'd to it by the Duty of his Oath, as a Counsellor : And he denies the Words in the Article, or any other to that effect.

(24.) To the 24th, he saith, he gave his Opinion with the Restrictions mentioned in the Answer to the preceding Article : And that his Discourses have at all times been without any ill Intentions towards the Parliament ; and he denies he knew of the Publishing the Book, mention'd in this Article ; or who caus'd it to be publish'd.

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(25.) To the 25th, he saith, Ship-money was adjudg'd to be due and levy'd before his coming over ; and that it was not at his Instance that any were sued in the Star-Chamber : That he did say at the Council-Board, that the Mayor and Sheriffs were but ministerial, and ought not to dispute the King's Writs ; and that if, through their Remissness, the King was not able to provide for the Publick Safety, they deserv'd to be fin'd, which he spoke to hasten them, and not with a Design they should be prosecuted ; and denies the other Words charg'd in this Article.

(26.) To the 26th, he saith, he advis'd neither of those Projects, but was rather for the latter.— That some Merchants desiring him to move his Majesty to release the Bullion, he refus'd to meddle with it, because he knew nothing of that Matter ; but told them, if by their denying the King the Loan of 100,000 *l.* in such a time of Danger, they had compel'd him to seize the Bullion, they might thank themselves. That the Earl of *Leicester*, having written to the Earl of *Strafford*, that at *Paris* Commissioners were appointed to inspect the Merchants Shop-Books, and tax every Man according to his Ability, towards maintaining the Army, he did say they might bless God they were not under such a King here in *England* ; but did not speak any

thing to the Effect mentioned in the Article, and bewail'd himself that his Words had been so constantly misrepresented.

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(27.) To the 27th, he answer'd, That the Gentry of that County agreed to allow the Train'd-bands a Month's Pay : And it was assented to by his Majesty, and the great Council of Peers, that when any Regiments of Train-bands were permitted to return Home, those who were to pay them should contribute to the Charge of the rest : And this was done by Warrants from the Earl and his Deputy-Lieutenants, and was less Charge to the Countries than the other way : And he denies the other Particulars he is charg'd with in this Article.

(28.) To the 28th, he saith, That being Lieutenant-General to the Earl of *Northumberland*, and ten or twelve thousand Foot, and two thousand Horse, being near *Newcastle* under the Lord *Conway* about the 24th of *August*, and his Majesty having given Orders for the opposing the Passage of the River *Tyne* ; and the Earl reflecting, that if the *Scots* should pass the *Tyne*, *Newcastle* would be lost, being unfortified to the South, and knowing the *Scots* were distressed for Provisions, the said Earl did, by Letter from *York*, dated the 27th of *August*, advise the Lord *Conway*, with all the Horse and 8000 Foot, and all his Cannon, to march and fight them on the Passage of that River ; but before the Lord *Conway* receiv'd the said Letter, he had put himself in a Posture to engage the Enemy, having with him but part of the Horse, and but 1500 Foot, and part of the Cannon. And that the Earl had no Charge of the Army till the 30th of *August*, when he brought it to *York* to be supplied with Necessaries ; and design'd to have remain'd with them, but that he heard from several Hands there was a Design form'd to prosecute him in Parliament ; whereupon, having his Majesty's Leave, he left the Army under my Lord *Conway*, and came to *London* the ninth of *November*, and on the 11th he was taken into Custody. He saith, that *Newcastle* was not under his Care. And as to the rest of the Matters contain'd in the said Articles, that he is not guilty, &c. and prays time to produce his Proofs and Vouchers in his Defence.

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The Articles and Answer being read, the Lords adjourn'd to their House above, and appointed the next Morning to proceed in the Tryal.

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Tuesday, March 23, 1640.

Second Day.

The Court being set, and the Earl brought to the Bar, Mr. Pym began to open the Charge, and having shewn how much his Majesty, and the three Kingdoms, were concerned in the Event of this Cause: He said, it fell to his Share to take off those Vizards and Appearances of Truth, which were in the Preamble to the Earl's Answer. And as the Earl had endeavoured to wipe off the Aspersions cast upon him in the Charge, Mr. Pym endeavour'd to fix them upon him; and then call'd Witneses to shew the Falsity of the Assertions contain'd in the Preamble.

Mr. Pym opens the Charge.

N. B. Rushworth himself has omitted the Preamble.

And first, Sir Pierce Crosby was sworn.

Page 109.
The Witneses call'd.

The Earl objected to his Testimony; That he had been censur'd in the Star-Chamber for endeavouring to suborn Witneses against the Earl, to swear that he had kill'd a Man. That Sir Pierce had broke out of the Fleet Prison, and never appear'd till now, when he came to complain against him, or rather against the Court of Star-Chamber, who censur'd him; and he refer'd it to their Lordships, if this Man could be deem'd a competent Witnes?

The Earl objecting to Sir Pierce Crosby's Testimony, as being prejudic'd against him, he was set by for the present.

The Managers affirm'd, that here was no Crime alledg'd to disable him to be a Witness in a Case of Treason, where the King and the Commonwealth were concern'd: But some of their Lordships calling to have the House adjourn'd, that they might consider of the Objection, the Managers wav'd his Testimony for the present, and said they would bring him again to Morrow.

Page 110.

Then Sir John Clotworthy was sworn.

He depos'd, That in the tenth Year of the King, being a Member of the House of Commons in Ireland, and having voted against a Bill, Sir George Ratcliff (whom the Managers insinuated was the Earl's Creature) ask'd him in the House if he had

Evidence of threatening the Members of Parliament, &c. for giving their Votes.

not a Lease in such a Place? And the Deponent answering, Yes; Sir George Ratcliff bid him remember that. *This the Managers term'd a threatening Sir John for giving his Vote.*

Page 111.

This Witness being ask'd, if he heard Sir Pierce Crosby threaten'd: He answer'd, that Sir Pierce having spoken against a Bill in the House, he heard Sir George Ratcliff say to him, that was not Privy-Counsellor like.

The Lord Ranulagh being sworn, depos'd,

That about the tenth Year of the King, Sir Pierce Crosby being a Privy-Counsellor, and having voted against a Bill transmitted by the Deputy and Council, was sequestred from the Council, by the Advice of that Board; but whether it proceeded of the Lord-Deputy's Motion, or no, he knew not, tho' he thought it might proceed from the Lord-Deputy himself, as being most proper for him.

The Lord Montnorris being sworn, depos'd,

That Sir Pierce Crosby was sequestred from the Council-Table, on a Complaint made by Sir George Ratcliff at the Board, touching his voting of a Bill in Parliament: And that he was sequestred by a Majority of Voices, among which the Lord-Deputy was one.

Page 112.

Threatnings
us'd by the
Earl's Friends
brought as
Evidence
against him.

Mr. Nicholas Barnwell being sworn, depos'd,

That he being a Member of the House of Commons in Ireland, and voting for the old Boroughs, which had been sequestred from the House, by Reason of a Judgment in the Exchequer Chamber, Sir George Ratcliff threaten'd to quarter 500 Men upon him; and that this happen'd in November last; but the Deponent says, that the Lord-Deputy was not then in that Kingdom.

Mr. Egor was sworn, who depos'd,

That the City of Dublin was compel'd to pay 45 l. a Month to be exempted from quartering 40 Horse; and another part of the City, being in another County, was charg'd with the Payment of 10 l. a Month; which in the whole amounted to 55 l. a Month, and was look'd upon as a great Grievance, being contrary to their Charter. But being ask'd by the Lord Strafford, if the Lord-Deputies Foot-Guards, and Horse-Companies, were not billeted in

Exacting Mo-
ney of the City
of Dublin to ex-
cuse them from
quartering Sol-
diers.

in *Dublin* before his Time : He answer'd, the Foot-Guards were, but it was never drawn into a Matter of Money ; and that the Horse were never quartered upon them, unless for a Month at a time or so.

Then the Managers produc'd a Copy of the Remonstrance of the House of Lords in *Ireland*, to prove the Earl had endeavoured to subvert the Laws, and corrupt the Administration of Justice, as they had charg'd.

Page 113.

To this the Earl objected, that this was a Matter fallen out since his Impeachment : And that it was promoted by Faction, and he should in time be able to shew there was a strong Conspiracy against him.

The Managers said, he ought not to be suffer'd to charge the Commons with Faction and Conspiracy, and demanded their Lordships Justice.

Whereupon the Earl said, he had no Intention to reflect either on the Houses of Parliament in *Ireland*, or the Commons here, but upon some who were not Members of either.

Then the Remonstrance was read, in which the Managers observ'd all the Earl's glorious Declarations of his own Merits were confuted.

Page 114.

And to confute what the Earl had said, as to his having brought *Ireland* to bear its own Charge, they call'd Sir *Edward Warder*, to show that it did so before his Administration.

Evidence that *Ireland* bore its own Charges before the Earl went thither.

Sir *Edward Warder* depos'd,

That the last Money sent from *England* for Payment of the Army, was in *Easter Term* 1621, and no other Money had been issued since, unless to the Treasurer of the Navy, for Maintenance of the Ships upon the Coast.

Sir *Robert Pye* depos'd to the same Effect.

The Lord *Montnorris* depos'd,

That two of the Vessels on the Coast were paid by the Government of *Ireland* before my Lord *Strafford* went over.

My Lord *Strafford* demanded, if the constant Charge of the Government did not exceed the constant Charge of the Revenue, when he came thither?

Page 115.

The

But not without
extraordinary
Supplies given
by the Irish
Parliament.

The Managers acknowledg'd it did, but that Defect was supplied by a Loan of 120,000 *l.* from that Country ; so that nothing went from hence.

The Lord *Strafford* reply'd, that notwithstanding that Contribution the Crown was indebted near 100,000 *l.* when he went thither.

Evidence of the
Earl's making
use of the
King's Money.

Then Sir *Adam Loftus*, the Vice-Treasurer, was sworn to prove the Earl made use of 24,000 *l.* of the King's Money, notwithstanding his Majesty's Necessities.

Sir *Adam Loftus* depos'd,

That in the Year 1638, Sir *George Ratcliff* mov'd him to give Discharges for 24,000 *l.* the Earl and he had of the Money arising from the Customs, and they would give him their Bond for it ; which they did ; and they repaid it about three Months since ; which the Managers observ'd was since this Prosecution began.

Page 116.

After these Proofs, as to the Charge in general, the Managers desir'd, that if the Earl would say any thing in Answer to what they had already alledg'd against him, he might do it presently.

Page 117.

The Earl said, That this Remonstrance, and some other Things, having been produc'd against him, which he did not expect, he desir'd time to recollect himself before he gave an Answer to them : But the Managers insisting he should answer presently, the Lords adjourn'd to their House, and being return'd, the Lord High-Steward said, that since the Commons did not press these things as Matter of Crime, but rather upon the Matter of Truth, contain'd in the Earl's Answer ; there was no need of farther time to answer these Particulars.

Page 118.

The Earl de-
fends the Affer-
tions in the
Preamble to his
Answer.

Then the Earl address'd himself to make good the Preamble of his Answer. And first ; as to his Assertion, That many good Laws had been made in *Ireland* by his Means, he observ'd, that was not denied directly ; only it was infer'd, that Laws were of no use where an Arbitrary and Tyrannical Government was set up above the Laws : But this he should not answer at present, it being part of the ensuing Charge.

He

He said he could make it appear also, that tho' there had been but two Parliaments in his Time, that there had not been so many in fifty Years before, as he had affirm'd. And whereas he had deny'd his being concern'd in any Monopoly, he still affirm'd he had always discourag'd them; unless the Tobacco Business was look'd upon as such, and this he should show was none. That it was also true (and he did not find it controverted now) that his Commission was not larger than his Predecessors.

Page 119.

That as to the Revenue, there was a Contribution of 200000*l.* for eight Years before he went to *Ireland* to make it good; and when that Contribution was determin'd, the Revenue fell as much short again. That the Crown was indebted also 1000000*l.* when he went to *Ireland*, and he left 1000000*l.* in the King's Coffers, and other Sums were laid out in Purchases for the Crown; which shows with what Advantages the Subsidies have been bestow'd that were rais'd.

Page 120.

Here the Managers acknowledged the Revenue had been rais'd, but insinuated that it was done by indirect Means; and observ'd, that tho' *Ireland* had supported itself by Subsidies they rais'd; his Assertion in general, That *Ireland* did not support itself till he came thither was not true.

The Earl said, he only meant that the constant Revenue was not sufficient to defray the Charges of the Government when he came thither, which it was now, tho' 600 Horse were added to the Army.

As to his using 240000*l.* of the King's Money, for which he gave Bond, he produc'd the King's Warrant, giving him leave to make use of 400000*l.* for three Years, and said that this was two Years ago, when his Majesty was not in any want of Money, and there was a Surplusage of 1000000*l.* in the Treasury; and that it appear'd he had repaid it before the Time. That while he had it, there was the value of 400000*l.* left in the Comptrollers Hands, as a Security, pursuant to the Warrant. But that by an Order from the Commons in *Ireland* (by what Law he knew not) his Magazines were seiz'd, his Goods possess'd and given to others, to sell at their own Prizes, and his People were im-

Page 121.

The Earl complains of his Effects being seiz'd and his Agents imprison'd, by an Order of the Commons of *Ireland*.

prison'd,

Page 122.

prison'd, as if he had been already convicted of Treason. That he had not only caused the Possessions of the Church to be restor'd, as he had before affirm'd, but procur'd an Act of Parliament to prevent their being wasted or misused by the present Incumbents. And tho' it was said he had caused these Restitutions by illegal Methods; there had been no manner of Proof of that.

Page 123.

He still aver'd he had prefer'd many deserving Men in the Church, and instanced in several; and tho' Bishop *Atherton* had prov'd contrary to his Expectations, and had some secret Faults he was ignorant of when he prefer'd him; he had since suffer'd for it; and unless he could have inspected his Heart, this ought not to be laid to the Earl's Charge.

Page 124.

As to the Number of Protestants being increas'd in *Dublin*, during his Administration, he said he could immediately make proof of it, if that were doubted; but the Managers said they did not charge him in this Particular.

Then he went on and said, it seem'd to be admitted also, that he had prefer'd none but Protestant Officers. And as to *Dublin* being exempt from billeting Soldiers by their Charter, this had been always deny'd by former Deputies; and by the Confession of the Alderman who was produc'd as a Witness, my Lord *Falkland's* Foot Companies were billeted there.

Page 125.

That as to the Increase of Shipping, it was manifest there was now 100 Tuns to one there was when he went thither; and the Customs, by the same Book of Rates which was in use when he went thither, were advanc'd from 13000*l.* to 40000*l.*

Admits Juries
had been sen-
tenc'd by the
Council, for go-
ing contrary to
Evidence.

That he acknowledg'd divers Sentences pass'd against Jurors in the Star-Chamber, for going contrary to plain Evidence; that he had but one Voice there, but that when those Sentences came to be examined, they would appear to be founded on the greatest Reason in the World; and unless a strict Hand were kept over the Natives, their Priests would lead them as they pleas'd: And it was plain, that either they did not or would not understand their

their Evidence ; and it had been ordinary in *England* to fine Juries for going contrary to Evidence.

That as to 50000*l.* receiv'd by him in *England*, Mr. Vice-Treasurer in *Ireland* was answerable for it, and he did not doubt would give a good Account of it ; tho' of that 14000*l.* still remain'd unpaid.

That as to what was said of his having wrong'd his Majesty 5 or 6000*l.* a Year in the Customs, he should make it appear, when he came to answer that Article, that he had not wrong'd him of a Farthing, but made a very profitable Bargain for his Majesty. And thus having gone through the Preamble, he observ'd that the Testimonies of Sir John Clotworthy and my Lord Ranulagh did not concern him ; and that Mr. Barnwell's Testimony related to what was spoken when he was out of the Kingdom, and concern'd Sir George Ratcliff and not him.

Page 126.

That tho' the Parliament of *Ireland*, in their Remonstrances, disclaim'd the Preamble in the Act for the four Subsidies, he had Witnesses in Town to prove it was the general Vote of the Commons-House, and pass'd with as much Applause and Chearfulness as any Thing could pass, and he believ'd there never was any Exceptions to it till he was impeach'd.

That as to Sir Pierce Crosby, the reason of his being put from the Board, was, that having voted for the Bill in the Council, and set his Hand to the Transmission, he afterwards voted against it in the House ; whereupon it was thought fit to sequester him from the Council till his Majesty's Pleasure was known.

Page 127.

The Managers reply'd, that what he had said to the Preamble of the Earl's Answer, was not by way of Charge, but to disprove what the Earl had advanc'd to overthrow their Charge ; and that if the Charge still remain'd in force (as they conceiv'd it did) the Services he had perform'd would not mitigate it. That tho' it were true he had not himself been guilty of Breach of Privilege, if under his Government it was invaded by others, he could lay no great Claim to Merit in his having procur'd Parliaments. And as to many things not being

The Managers
reply to the
Earl's Defence
of his Preamble.

Page 128.

being yet prov'd, they defer'd it but while they came to the Articles. That if he had prevented Monopolies, he might do it for sinister Ends ; and doing his Duty in one Thing, could not compensate for his Neglect of it in another ; and concluded, that what they had now forbore to reply to, would be made good in the Charge.

Wednesday the 24th of March.

Third Day.

Sir *Pierce Crosby's* Testimony allow'd.

Page 129.

The Court being set, the Lord High-Steward acquainted the Managers, that the Lords had resolv'd Sir *Pierce Crosby* should be examin'd.

Mr. Serjeant *Maynard* desir'd, that since some time had been spent since the reading of the Charge, he might be permitted to open it again, and then proceeded to shew their Lordships, That this was a Treason not of a single Act, but a Habit ; a Trade, which this great Lord had exercised ever since his Majesty had bestow'd any Favours on him : That it tended to deprive them of their antient Laws, and, instead of them, to introduce an arbitrary Government, bounded by no Laws, but the evil Counsel of such Ministers as he had been.

That other Treasons could extend but to the Life of the reigning Prince, and he might be succeeded by another, who might support the Glory and Justice of his Throne ; but if such a Design as this should take effect, *Law and Justice* would be taken from the Throne, and *Will* placed there, and they must despair of seeing any Remedy. —

Page 137.

First Article.
Concerning his
procuring an
exorbitant Com-
mission.

Then he went on to open the several Articles they intended to proceed upon [for several of them were entirely drop'd, as the Reader will observe] and they began with the Proofs relating to the first Article, viz. ' That he had procur'd Alterations in his Commission, when he was President of the North ; im-
' powering him to proceed according to the Course of the
' Star-Chamber and Chancery, and to grant Injunctions
' to the Courts of Common Law. And that he procur'd
' that no Prohibitions should be granted ; and that none
' should be discharg'd on a Habeas Corpus, till they
' had perform'd their Decrees. And that in pursuance of
' the Powers he had obtain'd by this Commission, he had
' caused

' caused many to be fin'd and imprison'd, to their utter
' Ruin and Destruction, &c.

To prove the Powers mention'd to be in the Commission, the 19th Article of the Commission, granted 8 Car. was read, where that Court is im-power'd to determine according to the Course of the Star-Chamber. And the 23d Article was read, which gives Power by Injunction to stay Proceedings at Common Law. And the 28th Article was read, whereby Power is given to the Serjeant at Arms to attach Persons in any part of the Kingdom, and bring them before the President, where they departed the Jurisdiction of that Court, after a Commission of Rebellion sued forth. And the 29th Article was read, granting that no Prohibition should be sent from the Courts of *Westminster*, where that Court did not exceed the Kings Instructions: And if an *Habeas Corpus* should be sued forth, the Party committed for not performing an Order of that Court should not be discharg'd while the Order was in force; and if any Fines should be estreated thereupon, the Exchequer should discharge them.

Page 138.

To prove that Process had been granted to attach Persons out of the Jurisdiction, before the above Clauses were inserted in the Commission:

John Gore was sworn.

He depos'd, That in November 1632, his Father, Sir Thomas Gore, was arrested in London by a Serjeant at Arms; and that thereupon his Father appeal'd to the Council, and my Lord Strafford fell on his Knees and besought the King, that if he had not Power to bring in a Delinquent, who affronted the Court on his stepping out of the Precincts of the Court, that he might leave that secure, and lay his Bones in his own Cottage: And adds, that his Father was detain'd eighteen Weeks in Custody. And another of his Sons depos'd to the same effect.

As to Prohibitions.

John Musgrave depos'd, That the Earl had said in a certain Cause in the Year 1632. That if there was a Prohibition he would not obey it; and that at a Reference, in that Cause, to some of the Judges, he said he would give no further Meetings, but would appeal to the King.

Page 140.

F. Thorpe

Page 141.

Page 142.

Page 143.

The Court to
examine the
Witnesses, and
not the Ma-
nagers.

Page 144.

F. Thorpe was also sworn, and depos'd, That some Years past, Judge *Hutton* told him, the Earl had shown himself very angry with him, because he had granted a Prohibition. That the Deponent having mov'd for several Prohibitions, was told the Earl was angry with him on that Account. And that waiting on the Earl, to prevent any Misunderstanding; the Earl told him he had nothing to say to him, but that he had oppos'd him; and he had eas'd him of his Office of Justice of the Peace. And that as the Deponent was attending a Cause in the Star-Chamber, the Earl laid his Hand on his Shoulder, and commanded him not to depart the Town. That he petition'd his Lordship, after he had attended a Week in Town, and made Friends to him, to know where he was to attend and for what; and was at length given to understand, it was for not paying his Knighthood Money in *Yorkshire*; but he believ'd it was on account of his moving for Prohibitions. However, after 13 or or 14 Days Attendance, at the Instance of a noble Lord his Friend, the Earl permitted him to go Home, and he paid the Knighting Money. Being ask'd who his Friend was, he answer'd 'twas my Lord *Goring*. And he deposed further, That neither himself, nor any other in those Parts, dare afterwards move for Prohibitions, knowing well the Price of my Lord *Strafford's* Displeasure.

Here the Lord *Strafford* desir'd that the Witnesses might stand apart from the Managers; and that the Court, and not the Managers might examine them.

Then the Lord High-Steward directing him to speak as to his own Imprisonment, he depos'd, That about ten Years since he was sent for to attend the Lord President and Council at *York*; and that he was kept eight Days in the Pursuivants Custody, and being brought to the Council-Table, the Earl commanded him to kneel, and was offended that he continued kneeling no longer: and that a Letter was read from some Gentleman, giving an Account the Deponent had spoken more than became him at the Sessions in behalf of a Client; and that he was order'd to find Sureties, and make a publick Submission at the Sessions, which he did. And he supposed

supposed this was put upon him because he opposed the Jurisdiction of the Court of York; and not for saying that an Indictment was no Evidence to a Petit Jury, as was pretended.

George Hawes being call'd and demanded what he knew of fining Sir Conyers Darcy. The Earl acknowledg'd he consented to the fining of him, but that it was not by Virtue of the said Commission, but before.

Then the Managers having sum'd up the Evidence that had been given of this Article, the Earl desir'd time to retire; and the Court granted him some little time to peruse his Notes at the Bar, which the Managers alledged to be very unusual. The Earl said the Case was different where a Man was impeach'd for a known Treason, and when one is to answer such a mix'd Charge; and said it was strange that when a thousand Misdemeanors would not make one Felony, 28 Misdemeanors should amount to Treason; and that if they were but Misdemeanors, he ought to have been allow'd the Benefit of Council, and to have examined his Witnesses upon Oath; but here, under pretence of Treason, he was debar'd of these Privileges, and had not leave to summon his Witnesses till Friday last, tho' the greatest part of his Proofs were to come from Ireland.

Page 145.
The Earl is allow'd some short time to peruse his Notes at the Bar.

Then he proceeded to answer the Proofs that had been produc'd against him. And as to the Clauses in his Commission, the 8th Car. he aver'd that they were not procur'd by him, and he knew nothing of them; nor was there any Proof that he did, but that in truth, the King's Council, on the renewing them, usually inserted what they thought might conduce to his Majesty's Service; and it was, at last, approv'd by the Lord Chancellor. And that as to the Execution of it, he never did one Act from the Date of the Commission to this Hour, or ever staid a Minute as President of the Council of York; and appeal'd to their Lordships and the Commons themselves, if then he could be charg'd criminally with any thing concerning that Commission. That the Sentence of Sir Conyers Darcy was just, nor did he complain of it: And that from the

And then answers the Charge in the first Article.

first Institution of the Court, they had both a Star-Chamber and Chancery Power. That as to the Sentence of Sir *John Bourcher*, with which he was charg'd, tho' it was not insisted on, he was not concern'd either in the Beginning, Proceeding or Ending of that Cause, being all the while in *Ireland*. And the Commission of the 13th *Car.* was renew'd also when he was there, and he had no more Knowledge of that than of the former.

As to the Witnesses produc'd, he observ'd *Gore* said nothing of the renewing his Commission; and as to his Father's Commitment it was no part of his Charge, and therefore he did not think himself concern'd to answer it; and he said the same as to *Musgrave's* Testimony. That as to *Thorpe* he said nothing to the purpose, and spoke only to Times preceding his Commission, and to what was not contain'd in the Charge; and it was made up of Hearsay from Justice *Hutton* and Sir *William Ellis*; and the Earl said it was 13 or 14 Years ago, and he did not remember my Lord *Goring's* speaking to him about *Thorpe*. That he had put in his Answer, and if it was not impeach'd by the Testimony of Witnesses (as it was not) he conceiv'd the Contents ought to be admitted.

Page 147.

He calls his
Witnesses to
make good his
Answer to the
first Article.

Then the Earl produc'd Witnesses to prove his going over to *Ireland* in *July* 1633, which the Managers also admitted. He also prov'd that he did not return to *York* till 1636; and that he never acted as President of *York* since the Commission renew'd the 8th *Car.* And he prov'd that he went over to *Ireland* again in *November* 1636, and did not return to *England* till 1639. And concluded, that being charg'd only with procuring and executing this Commission, he humbly offer'd this Answer and submitted.

The Managers
Reply.

The Managers reply'd, That *Gore* had spoken particularly of the Occasion of enlarging the Commission upon the arresting his Father, when the Earl fell on his Knees before his Majesty, &c. That from the Testimony of *Thorpe* and *Musgrave* of what he did before the Commission renew'd, it was probable he was privy to it; and that tho' this Particular was not Treason, yet the whole Charge together

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gether amounting to a Subversion of the Laws was Treason, and this was an Evidence of it.

Then the Managers proceeded to the Second Article, importing that the Earl had said at York Affizes that some of the Justices were all for Law, but they should find that the King's little Finger should be heavier than the Loins of the Law.

Page 149.
Second Article.
That the King's little Finger should be heavier than the Loins of the Law.

William Long was sworn.

He depos'd, That when Sir Thomas Leyton was Sheriff of York shire in 1632, he heard my Lord Strafford say at York Affizes, That some nothing would content but Law, but they should know that the King's little Finger should be heavier than the Loins of the Law; and that he thought my Lord stood at the Bar when he said it.

Sir Thomas Leyton was sworn.

Page 150.

He depos'd to the same effect, adding only, That the Words were spoken on Lammis-Day, 1632 or 1633, and the Earl was then upon the Bench.

The Testimony of one Marmaduke Potter was read, being to the same effect; a Witness having first depos'd that he heard Potter was dead.

The Deposition of a Witness read who was reported to be dead.

The Earl answer'd, The Words could not be spoken when these Witnesses depos'd they were, because he was then in Ireland; and observ'd that none of the Witnesses were able to give any Account of the Occasion of his speaking them; but in truth he had spoken the Words mention'd in his Answer at another time, which were of a different Tendency, and the Occasion of them he had express'd in his Answer, and shew'd how absurd the Words the Witnesses had attested must have been upon that Occasion.

The Earl's Answer to the Charge in the Second Article.

Then he call'd Dr. Duncombe as a Witness.

Page 151.

He depos'd, That being at Dinner at Dr. Stanhope's at York, at the time of the Affizes, Sir Edward Stanhope came in, and related to them some Passages of the Lord President's Speech; and said, that as he was showing how the Prerogative, in some Particulars, was easier than the Common Law, he used these Words, *The little Finger of the Common Law is heavier than the Loins of the King.* That the Witness had often since related this Passage to others; but

but my Lord *Strafford* was not acquainted with what he could say in it till last *Sunday* Night.

Sir *William Pennyman* was call'd as a Witness for the Earl.

Page 152.

He depos'd, That a Rumour being spread in the Country, that my Lord *Strafford* had receiv'd great Sums of Money concerning Knighthood, which he had not paid into the Exchequer; the Lord *Strafford*, at the Affizes, took occasion to vindicate himself, and told them this Mistake had been occasion'd by some Officers of the Exchequer; and proceeding to discourse of the Legality of Knighthood-Money, he shew'd them that the Commission for compounding was a Commission of Grace and Favour; and from some Instances he mention'd in that Case, he infer'd, *That the little Finger of the Law was heavier than the Loins of the King.*

Page 153.
The Managers
reply to the
Earl's Answer
to the Second
Article.

The Managers reply'd, That their Witnesses having attested the Words spoken, that Circumstance of Time was not material; and call'd Sir *David Fowles* to depose his Knowledge of this Matter, to whom the Earl objected he was a prejudic'd Person, being a Prisoner in the *Fleet* on a Sentence in the Star-chamber, for Words he had spoken against the Earl, conducing to the Point in question. But the Objection being over-ruled,

Page 154.

Sir *David Fowles* was sworn.

A Witness examin'd against the Earl, who was sentenc'd for slandering the Earl.

He depos'd, That my Lord *Strafford* spoke the Words charg'd in this Article in a Speech at the Affizes, but could not tell how they were introduc'd.

Sir *William Ingram* also was sworn, and depos'd to the same effect.

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The Earl insisted, that if the Words were spoken (as he took God to witness they were not) they did not amount to Treason, which he desir'd his Council might be heard to in a proper time.

Thursday the 25th of March.

Fourth Day.
Third Article.
That Ireland
was a conquer'd
Nation, &c.

This Day they proceeded on the Third Article, importing, that the Earl had said Ireland *was a conquer'd Nation, and that the King might do with them as he pleased.*

The

The Earl mov'd that he might add something to what he had said the Day before, in relation to the Second Article, but it was not admitted.

Page 156.

Robert Kennyday was sworn.

To whose Testimony the Earl excepted, he having been convicted of Extortion, and other Misdemeanors, and bearing a particular Grudge against the Earl; and added, that it was his Misfortune to have such Men produc'd as Evidence against him, as had been convicted of Crimes during his Ministry, who could not be suppos'd to be backward in aspersing him; but his Exception was overrul'd.

Page 157.
One convicted of Extortion, and who bore a Grudge to the Earl, allow'd to be a Witness against him.

Then *Robert Kennyday* depos'd, That the 30th of September 1633 he was the King's Remembrancer in Ireland, and that Day the new Mayor of Dublin was presented to my Lord Strafford; and the Recorder made a Speech on the Occasion, reciting the many Graces they had receiv'd from the Kings of England, and among the rest, a Charter that no Soldier should be billeted on their City of Dublin. That the Lord Deputy answer'd several Particulars in the Speech; and particularly he said, That they were a conquer'd Nation, and the King might do with them as he pleas'd; and for their antiquated Charters, they were binding no further than he pleas'd. And being ask'd if the Earl did not say they were void by misusage, or the like; he answer'd, he heard no such Thing: And this Witness added, as to his own Credit, that tho' he was question'd, he never was censur'd.

Richard Earl of Cork was sworn.

My Lord Strafford objected to his Testimony, That an Information was exhibited against him in the Castle-Chamber in Ireland, and my L. Cork had so far acknowledg'd what he was charg'd with, as to desire to be an Object of the King's Mercy. And besides, that my Lord Cork had a particular Prejudice against him, for being concern'd in the Composition he made with the King, whereby he was oblig'd to pay 15000*l.* but the Exception was overrul'd.

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Then the Lord Cork depos'd, That the Lord Deputy spoke the Words attested by the last Witness.

The Lord Gorminstone and the Lord Killmallock
were sworn.

Page 159.

They depos'd, That in the 10th Year of the King *anno* 1634, a Petition having been deliver'd to the Lord *Strafford*, on behalf of the Country; he did, in the presence of both Houses, sitting under the Cloth of State, declare, That Ireland was a conquer'd Nation, and therefore must expect Laws as from a Conqueror; adding, That the Book of Instructions, established in King James's Reign, for the orderly Government of the Courts of Justice in that Kingdom, were Instructions contriv'd and procur'd by a Company of narrow-hearted Commissioners, who knew not what belong'd to Government.

Sir *Pierce Crosby* also depos'd, That he heard my Lord *Strafford* speak the same Words to both Houses.

Page 160.
The Earl's Defence to the
Third Article.

Shews the hardship of mixing
Treason and
Misdemeanor
in the same
Charge, whereby he is de-
priv'd of many
Advantages.

My Lord *Strafford*, in answer to this Evidence, observ'd, in the first place, That the Natives of Ireland had ever borne a Prejudice to their Governors sent from *England*: That by their popular Clamours they had occasion'd several of their Governors to be prosecuted, and even sentenc'd as Traytors, who had afterwards been found innocent; and whose Administration appear'd to have deserv'd rather to be imitated than censur'd, when the Heat was over, and Matters came to be calmly consider'd: And that in the Administration of Justice many must necessarily be offended. That however, here was nothing in this Charge that amounted to High-Treason, tho' it might to Misdemeanor, in which Case he ought to be allow'd Council and his Witnesses upon Oath, but that he was debar'd of these Advantages here, by their having involv'd all under the general Charge of Treason.

Page 161.
His Answer not
being reply'd to
ought to be ad-
mitted.

That he having but since *Friday* last to prepare for his Tryal, it was impossible, in so short a time, to fetch his Witnesses from *Ireland* and produce his Proofs: And he desir'd their Lordships to consider that in all other Courts, where the Party puts in his Answer and it is not reply'd to, nor the Party admitted to make Proof of his Answer, it is admitted to be true, and so it ought to be in his Case. That,
according

according to a Statute of *Edward VI*, he ought not to be prosecuted for Words above 30 Days after they are spoken; and if popular Actions, ought to be prosecuted within a Year or two, much more a Charge for Words spoken.

That a Prosecution for Words, ought to be within a short time.

That the Laws and Customs of *Ireland* (according to his Answer) were different from those in *England*; and therefore he hop'd their Lordships would distinguish rightly, and not judge of him according to those of this Kingdom.

Then he proceeded to answer the Evidence. And as to the Words *That Ireland was a conquer'd Nation*; this he said he must still aver, it appearing to be so in all Histories, and being recited to be so several times in an Act of the 11th of *Eliz.* on the Attainder of that famous Rebel *Shan Oneal*. And that these Words not being design'd to upbraid that Nation, but to shew how infinitely they were oblig'd to the Kings of *England*, who, when they were in that Condition, were pleas'd to communicate to them the Laws of their own Kingdom; he did not see how they could be taken ill, and that in fact, no Man took offence at them when they were spoken. And that for the other Words, *That the King might do with them as he pleas'd*, admitting they related to the Conquest, no Offence could be taken to them, for the Conqueror might have given what Laws he pleas'd.

Page 162.

Sir *H. Slingsby* was call'd as a Witness for the Earl.

He depos'd, That he could not remember the very Words that were spoken by my Lord *Strafford*, at the presenting of the Mayor of *Dublin*; but he remembered the Scope and Design of them to be to ingratiate his Majesty's Government to them; and he knew they were well accepted by several, and took that effect, that the Mayor invited his Lordship to Dinner at his House, where divers Citizens congratulated his coming among them.

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Then the Earl said, as to that other Expression, *That the Charters of Dublin were nothing worth, and the King might do with them as he pleas'd*; he confess'd it was likely he might say so, for that they had forfeited their Charter by making several By-Laws that were contrary to the Common Law, and neglected

neglected several Duties they were oblig'd to perform by those Charters; and that several Complaints had been made thereof, both to the Council Chamber and the Parliament. And the Earl added, that the greatest part of the Aldermen were Recusants, and stood upon their Charters, refusing to obey the Orders of the Council-Board, which had occasion'd great Disorders.

Page 164.

Robert Lord Dillon was call'd as a Witness for the Earl.

Page 165.

He depos'd, That the Charters of *Dublin* were brought to the Council-Board, about five or six Years ago; and the King's Council shew'd that the City exercised By-Laws contrary to the Common Law, in several Instances. And that the same Complaints were made against them by several Members in the House of Commons in *Ireland*; and particularly, it was complain'd, That they excluded divers Tradesmen, that came from *England*, from setting up Manufactures there.

Here the Earl desir'd their Lordships to observe the Reason he had to question their Charters; and added, that at his going over, the Natives, being Roman Catholicks, would ingross all the Manufactures to themselves, and depress the *English*. And that now there were three Protestants in *Dublin* for one that was there when he went thither. And he suppos'd what had most provok'd that Nation against him, was his having interpos'd so effectually in these Matters.

Page 166.

And further, That he had never gone about, in a judicial Way, to deprive them of these Charters, but that they still enjoy'd them in their full latitude; all that he design'd by these Representations being to keep them within their due Bounds.

As to those Words alledg'd to have been spoken by him in the Parliament House, viz. *That they must expect Laws from the King as from a Conqueror*, he did not think himself oblig'd to give any Answer to them, not being contain'd in the Charge; but he solemnly aver'd he never spoke them, and that they were directly contrary to the drift of his Discourse; and that he had given out Copies of his Speech to his Friends in *Ireland*, which if he had had to produce,

duce, would have clear'd him of this Asperſion. He remembred, indeed, that ſpeaking of a Debt of 100,000*l.* that lay upon the Crown, he did ſay, If the Kingdom of *England* ſhould ſtill be put to bear their Charges, and the whole Expence ſhould ſtill reſt on the Conqueror, they were dealt with as never any other conquer'd Nation had been: And that my Lord of *Ormond* did come to him, and tell him that the Words were not well taken. And he answer'd, *Truly my Lord you are a conquer'd Nation, but you ſee how I ſpoke it.*

Page 167.

Then the Earl call'd my Lord *Dillon*, and ſeveral other Witneſſes, who depos'd, they heard the firſt Words concerning their being a conquer'd Nation; but not thoſe other *That they muſt expect Laws from the King as a Conqueror.* And Sir *George Wentworth* particularly depos'd, that he had a Copy of the Speech, and no ſuch Words were in it.

Page 168.

The Managers reply'd to my Lord *Strafford's* Defence; That tho' they did not reply to his Answer, yet they had aver'd their Charge to be true; and therefore his Answer could not be taken *pro Confefſo.* And that tho' it was admitted *Ireland* was govern'd by other Laws, that could not avail him, becauſe the Words testified to be ſpoken by him, tended to the Subverſion of all Laws. That tho' Sir *H. Slingsby* depos'd that the Words ſpoken were well taken, they could ſhow they were reſented with a great deal of Grief and Sorrow; notwithstanding the Mayor dare not tell my Lord *Strafford* ſo then, or forbear the uſual Complements. That if his Lordſhip had ſpoken of the Charters alone, as being void Charters, there had been no Crime in it; but taking the whole Diſcourſe together, and telling them they were a conquer'd Nation, and their Charters were no farther good than the King pleas'd, this would admit of no Mitigation.

The Managers
reply to the
Earl's Defence
as to the Third
Article.

Page 169.

That it was not uſual to ſet forth all the Circumſtances of Proof in a Charge; and that the Words ſpoken in Parliament are a Proof of that Part of the Charge which ſays he had corrupted the Laws and Government; and that ſome of the Earl's Witneſſes not remembering the latter Words, is no Proof that they were not ſpoken. And that
the

Page 170.

Page 171.

the Speech Sir George Wentworth mention'd to be in writing, was deliver'd at another time : And to this they re-examin'd two or three of their Witnesses, who inclin'd to believe, the Words to which Exception was taken, were in another Speech ; and aver'd, that they were highly resent'd at the time they were spoken.

Page 172.

Then the Managers show'd, that the Common Law was the same in *England* as *Ireland*. That by a Statute there, and by the Instructions settled in King *James's* Time, and a Proclamation thereupon, Causes were restrain'd to their proper Courts. And that the Lord Deputy and Council were not to meddle in Causes between Party and Party. And that unless my Lord *Strafford* could show a Statute, that gave him Power, as Governor alone, to take cognizance of meerly private Causes, it must be allow'd that he had erected an arbitrary Power. And this they said they should make the Ground of the subsequent Articles concerning *Ireland*.

Page 173.

Fourth Article.
That he said
he would make
an Act of State
equal to an Act
of Parliament.

That in a Cause of the Earl of *Cork's* he had said, *He would have neither Law nor Lawyers dispute his Orders. And that he would make the Earl of Cork and all Ireland know, that an Act of State was as binding in Ireland as an Act of Parliament, &c.*

Page 174.

The Managers said, this Article concern'd my Lord of *Cork's* being disseiz'd of an impropriate Rectory on a Paper Petition to my Lord *Strafford*, and refer'd to the Council-Table. And they call'd my Lord *Ranulagh* to prove, that in a Case concerning Land, no Decrees were ever made there before my Lord *Strafford's* Time, between Party and Party. And my Lord *Cork* depos'd, That no Decrees were ever made at the Council-Board, in Causes between Party and Party, except Causes concerning the Church and Matters of Plantations.

But being ask'd by the Lord *Strafford*, if he did not, as President of *Connaught*, on Paper Petitions, act in the same manner as the Deputy did on Petitions to him.

Fifth Day.
Friday, March
26, 1641.

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It was rul'd that my Lord *Ranulagh* need not answer the Question, it tending to make him accuse himself.

The

The Earl of Cork was sworn.

He depos'd, That having been Tenant to the Crown, of a Rectory and certain Tythes, for 35 Years; the Lord *Strafford* presented one *Arthur Gwyn* to it, who had been Groom to the Deponent's Coachman. That the Deponent thereupon went to his Lordship, and desir'd, if he must be sued for it, it might be in the Exchequer, which was the proper Court, and not in the Council Chamber; but the Deponent could not prevail, and an Order was made that *Gwyn* should have the Tythes, till the Lord *Cork* should recover them at Law. That the Deponent brought his Action at Law, whereupon the Lord *Strafford* sent for him; and the Deponent saying, he hop'd he would not deprive him of his Possession on a Paper Bill, without Tryal; my Lord *Strafford* answer'd, *Call in your Writs, or if you will not, I will clap you up in the Castle; for I tell you I will not have my Orders disputed by Law nor Lawyers.* That the Deponent desir'd it might be inserted in the Order, that *Gwyn* should give Security for the Rents, in case the Deponent recover'd them by Law, and my Lord *Strafford* said it was but reasonable; yet when the Order was drawn up, that Clause was left out. And that Sir *Paul Davis*, Clerk of the Council, told him, that my Lord *Strafford* struck it out with his own Hand.

Page 176.

That the Deponent being prosecuted in the Star-Chamber, for having made a long Lease of a Parsonage, contrary to an Act of State made in King *James's* Time; and representing to my Lord *Strafford* that it was a pure Act of Charity, and that he was not appriz'd of any such Act of State; and therefore it was not reasonable to prosecute him for it; my Lord *Strafford* answer'd, *I tell you, my Lords, as great as you are, I will make you, and all the Subjects of Ireland know, That any Act of State, made or to be made, shall be as binding to you, and the Subjects of Ireland, during my Government, as an Act of Parliament.*

John Waldron was sworn.

He depos'd, That in a Cause between the Merchants of *Galloway*, and others, concerning a Church Lease, at the Council-Table; Mr. *Martin*,
of

Page 177.

of Council for the Merchants, mentioning an Act of Parliament, which, he said, made for his Clients; my Lord *Strafford* said, *He would make him know, that an Act of that Board should be as good as a Statute, or to that effect; and added, that my Lord Strafford made an Offer, that if the Merchants would take a Lease of 21 Years, at half Value, they should have it; but if they would rely on the Title of their Lease, they must take the Adventure.*

John Kay also depos'd, that he heard the Lord *Strafford* speak those Words to Mr. *Martin*.

The Lord *Killmallock* depos'd, That he heard the Lord *Strafford* say the same Words at the Council-Table four or five Years ago.

Page 178.

Sir *Pierce Crosby* depos'd, That soon after my Lord *Strafford* came to *Ireland*, being at Dinner at the Deponent's House, with several others of the Privy Council, he took occasion to say, That if he (the said Lord *Strafford*) liv'd, he would make an Act of State to be of equal Power with an Act of Parliament; and added, that *Ireland* was a conquer'd Nation, and the Conqueror should give the Law.

The Earl's Defence, as to the Fourth Article.

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To the Evidence given on this Article, the Lord *Strafford* answer'd, That the Council-Board of *Ireland* was a Court of Record, where they proceeded by Bill and Answer, &c. That his Care to preserve the Authority of it, could not be construed a Subversion of the Laws, for it only directed the Execution of the Law in another Channel. And that this being the proper Court for the Protection of the *English* Planters and Protestant Clergy, must be supported.

My Lord *Dillon* was call'd as a Witness for the Lord *Strafford*.

He depos'd, That as long as he remembered, the Deputy and Council, in all Causes of Plantation and the Church, proceeded, as in other Courts of Equity, upon Oath. And that on Contempts of Acts of State or Proclamations (which he had heard the Judges say were a kind of Law of the Land for the time present) the Parties were attach'd,

tach'd, and brought before that Board, and sometimes fin'd and imprison'd there.

Sir *Adam Loftus* depos'd to the same Effect, but agreed with my Lord *Dillon*, that none ever were fin'd for Contempts in Case of particular and private Interests.

The Managers admitted the Council-Table to have Cognizance of Matters of Plantation and Church, and such as were recommended from the King to the Council; but would not allow it to be a Court of Record.

My Lord *Strafford* observ'd from the Evidence, That the Council-Board in *Ireland* had another Constitution than the Council here; and that my Lord *Cork's* Case concerning the Church, they had Cognizance of it. Then he produc'd the Order (which my Lord *Cork* acknowledged to be Sir *John Davis's* Hand) and my Lord *Strafford* aver'd, that the Order was just, and those Words appeared to be in it which my Lord *Cork* had depos'd were struck out; and by it my Lord *Cork* was left at Liberty to prosecute his Action within a Year.

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Mr. *Leak* was call'd and depos'd much to the same Purpose as the other Witnesses, concerning the Jurisdiction of the Council-Table; and added, that in the several Causes he had attended, he never knew my Lord *Strafford* give Sentence till the Parties were fully heard.

My Lord *Strafford* desir'd, that their Lordships would hear his Council upon the Statute of the 28th of *Hen. VI.* for remitting Causes to their proper Courts, and only observ'd at present, that by the last Clause the King's Prerogative was saved. And as to Mr. *Gwyn's* being a Groom, as my Lord *Cork* had attested, he produc'd a Certificate whereby it appear'd, that *Gwyn* was a Master of Arts; which the Managers did not controvert.

Page 181.

As to the Words he was charg'd with, he said, bare Words of a higher Nature would not amount to Treason; and that they ought to be prosecuted within a short time, according to 1 *Edw. VI. c. 12.* And that in the Case of my Lord *Cork*, where the Sentence was just and honourable, he might say, without Offence, that neither Law, nor Lawyers, should

should dispute his Orders; though it was improbable he should speak those Words, that very Order refering Matters to a Determination at Law.

That as to the Words importing, that an Act of State should be equal to an Act of Parliament, he observ'd my Lord *Cork* had a very exact Memory, that his Evidence should agree with the Words of the Charge to a Letter: However, it not being prov'd, that he had done any Act in Pursuance of such a Declaration, the Words alone could not amount to Treason. And he did not see, but where an Act of State was made agreeable to Acts of Parliament, and the Fundamental Laws of the Realm, and to prevent some present Mischief, till the Parliament might provide a Redress, but that such Acts were as binding for the time as Acts of Parliament (though he confess'd the Comparison might be odious.) He denied the Words Sir *Pierce Crosby* had attested, and excepted against his Evidence, as being a prejudic'd Person; as *Hoy* was also.

Page 183.
The Managers
Reply to the
Earl's Defence,
as to the fourth
Article.

The Managers reply'd, That though the Jurisdiction of the Council-Table extended to Cases of the Church and Plantations, yet my Lord *Cork* claiming the thing as a Lay Impropriation, deriv'd to the Crown by the Statute of Dissolution, they had not Cognizance of it: And that my Lord *Strafford* made his Government Arbitrary, in threatening the Earl of *Cork* to lay him by the Heels, if he went to Law; and it was not material whether the Order were just or not.

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Evidence ad-
mitted to be
given after the
Reply.

That though Acts of State were allow'd as a Temporary Provision, till an Act of Parliament could be had, yet when things were propounded and rejected in Parliament, they ought not to be supplied Acts of State. Then they call'd one *Roger Lotts*, who was sworn; which the Lord *Strafford* objected as irregular after the Reply. Whereupon the Lords adjourn'd; but upon their Return directed that *Lotts* should be examin'd; the Matter in question arising from what had been urg'd by my Lord *Strafford* in his Defence.

Then Mr. *Lotts* depos'd, That the Commons having rejected some Bills, particularly one which made it Felony for a private Person to have Gunpowder;

powder ; and being sent for up to the Lord's House, my Lord *Strafford* told them, that notwithstanding they had voted against those Bills, he would make them Acts of State, which would be as well.

The Lord *Strafford* answer'd, that he had receiv'd particular Directions concerning the trusting of Gunpowder in unsafe Hands, which he should forbear to open, it not conducing either to his Acquittal or Condemnation.

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Saturday, March 27, 1641.

Sixth Day.

This Article sets forth, That the said Earl, according to his aforesaid Speeches, and Declarations, did exercise a Power contrary to the Fundamental Laws of *Ireland*, over the Goods, Inheritances, Lives and Liberties of his Majesty's Subjects ; and particularly, that he procured Sentence of Death to be given against the Lord *Montnorris*, and another, by a Council of War in time of Peace.

Fifth Article.
Page 186.
Sentencing Men
to Death by a
Court-Martial
in time of Peace.

First, the Sentence against the Lord *Montnorris* was read, wherein his Majesty's Letter was recited, directing my Lord *Montnorris* to be proceeded against, in a Council of War, for his Speeches, inciting Revenge against the Lord-Deputy. The Sentence also sets forth the Occasion of this Proceeding, viz. That three or four Days after the Lord-Deputy had dissolved the Parliament, his Lordship sitting in the Presence Chamber, a Servant in moving a Stool happen'd to hurt the Lord-Deputy's Foot, which had the Gout in it ; and this being mentioned at the Lord-Chancellor's Table, one said to my Lord *Montnorris* who was there, It was your Lordship's Kinsman, who is one of the Lord-Deputy's Gentlemen ; my Lord *Montnorris*, in a scornful and contemptuous manner, answer'd, *Perhaps it was done in Revenge of that publick Affront that my Lord-Deputy did me formerly.* But I have a Brother that would not have taken such a Revenge.

Page 187.
Sentence against
the Lord *Mont-*
norris.

That these Words were adjudg'd an apparent Breach of the 21st Article of War, That no Man shall give any disgraceful Words of any Person in the Army, upon Pain of Imprisonment, publick Disarming, &c. And of the 13th Article, That no Man shall offer Violence or Contempt to his Commander,

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mander, or do any Act, or speak any Words to breed mutiny in the Army, or impeach the obeying of the principal Officer, upon Pain of Death. And that, according to the said Articles, the Council did unanimously adjudge the said Lord *Montnorris* to be imprison'd and depriv'd of all his Places which he held in the Army; to be disarm'd, to be banish'd the Army, and disabled from ever bearing Office: And lastly, to be shot to Death, or lose his Head, at the Pleasure of the General.

The Lord *Montnorris* sworn.

He depos'd, That upon the 11th of *December* 1635, he was summon'd to attend the Lord-Deputy at a Council of War the next Morning; that accordingly, coming to the Council-Chamber, he found several of the Officers assembled, but none of them knew the Occasion of their Meeting. After a little time the Lord-Deputy came in, and seating himself, commanded the rest to sit down, and the Deponent, as Vice-Treasurer, took his Place. Then the Lord-Deputy told them, he had call'd that Court to do himself Right against the Lord *Montnorris*. Whereupon the Deponent presented himself at the Board's End, and the Lord-Deputy made a Speech, concerning some Words spoken by the Deponent three or four Days after the last Parliament, which rose the 18th of *April* 1635, and read the Words out of a Paper he held in his Hand, which were to the Effect mentioned in the Sentence. After which he demanded of the Deponent, if he would confess, or deny them. Thereupon the Deponent desired a Copy of his Charge; and that he might answer by his Council. But his Lordship answer'd, That was not the Course of a Court-Martial, and demanded again if he would confess or deny them. Then the Deponent desir'd he might be us'd as a Peer of the Realm, and an Officer of the Crown, but was answer'd as before; and the Lord-Deputy caus'd his Majesty's Letter to be read, which put the Deponent in some Confusion; and he said, he had been misrepresented to his Majesty, and desir'd he might answer in Writing, and his Answer be presented to his Majesty before

before any further Proceeding : But that the Lord Deputy reply'd upon him in such Language as was not fit to be us'd to a meaner Man, much less to a Peer that desir'd nothing but Law and Justice. And the Lord-Deputy said, himself had represented him to his Majesty, and he did not use to misrepresent things ; and again requir'd of him directly, if he would confess, or deny the Words. Then the Lord-Deputy required the Lord Moore, who was sitting at the Board, to give Evidence ; and his Oath being given him, he refer'd himself to what he and Sir Robert Loftus had long before put under their Hands : Whereupon that Paper was given to the Clerk to read, which was the same the Lord-Deputy held in his Hand, and read the Charge out of ; and it being shewn to the Lord Moore and Sir Robert Loftus, they attested the Truth of it. That the Deponent solemnly protested he never spoke the Words ; and desir'd, that the Lord-Chancellor, who was Judge-Martial of the Kingdom, and then in Town, and at whose Table the Words were spoken, might be summon'd to give his Evidence, as also Sir Adam Loftus's Son, and several others ; and said he was able to prove, that the Words, which gave the Offence, were not spoken by him the Deponent ; but the Lord-Deputy refus'd to have them examin'd. That then the Lord-Deputy bid the Lord Moore sit down, and be one of his Judges, and commanded the Deponent to withdraw, which he did, and in less than an Hour was call'd in again, and order'd to kneel, and Sir Charles Coote, as Provost-Martial of Connaught, was commanded to pronounce the Sentence, which he did, being to the Effect before recited. And the Lord-Deputy, in a severe Speech, which he made upon the Occasion, said, there remain'd now no more (if he pleas'd) but to cause the Provost-Martial to do Execution : But as to the Matter of Life, he would supplicate his Majesty ; and, as he remember'd, he said he would sooner lose his Hand, than the Deponent should lose his Head. That the Deponent was then commanded to be taken to Prison : That he was never requir'd to Answer to the Articles on which the Sentence was founded ;

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and if he had, he should have answer'd, He never knew of any such. That he was inform'd the Council differ'd, some moving, that both the Articles might not be press'd; and that the Lord-Deputy answer'd, *He would have both or none.*

Page 191.

He further depos'd, That being committed the 12th of *December*, he was permitted to go to his House the 18th (being ill) where he remain'd till the 11th of *April* 1636, when he was committed again on a Prosecution against him in the Star-Chamber. That the second of *May* following he was permitted to go to his House again, being extremely ill, where he remain'd till the 30th of *January*, when he was imprison'd again, because he refus'd to sue out his Pardon, and remain'd a Prisoner till *March* 1637.

The Lord *Dillon* was sworn.

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He depos'd, That he was present at the above-said Council of War; that my Lord *Strafford* open'd the Occasion of their Meeting, as the Lord *Montnorris* had related: And added, that when the Lord *Montnorris* was withdrawn, and they came to voting, every Member, in giving his Vote on both Articles, profess'd he gave it in Confidence that Mercy should be extended to the Lord *Montnorris*, and with an Intercession that he might find Mercy from his Majesty: And when the Votes were all given, my Lord *Strafford* protested he had rather lose his Right Arm, than the Lord *Montnorris* should lose a Hair of his Head; and he would write to his Majesty to supplicate him for Mercy.

Page 193.

He further depos'd, That it was propos'd to proceed on both of the Articles, though he could not be positive by whom, but he thought by the Lord *Strafford*: That during the time the Lord *Montnorris* was withdrawn, the Lord *Strafford* gave no Vote, or spoke one Word to encline them: That at the holding the Council, great part of the Army was in *Dublin*, and frequently exercis'd there.

The Lord *Ranulagh* sworn.

He depos'd, That he was a Member of the said Council, and that they proceeded as the Lord *Montnorris* had open'd, and added, that after the Lord *Montnorris* was withdrawn, the Lord-Deputy said, that

that as he had complain'd to the King, he should expect that Honour from the Board that his Cause should be taken into Consideration, and such Redress given as was fit, and demanded Justice on the aforesaid Articles. That the Lord *Strafford* sometimes said, he would depend on their Judgment, but then would hold them to the Point of the Articles, and not give them a Latitude of proceeding to make him Reparation according to the King's Letter. But he said after the Council fell into the Debate, the Lord *Strafford* spake not one Word, or gave any Interruption; and had profess'd before, that if there had not been a Necessity of his Presence, he would have withdrawn himself. That at that time great part of the Army was in *Dublin*, and exercis'd daily; but that it was a time of full Peace.

The Lords *Cork* and *Dillon* further depos'd, That the Lord *Strafford* afterwards said, it was a just Sentence, and he would not lose the Honour of it.

William Castigat was sworn.

He depos'd, That last Summer was two Years, one *Thomas Denewitt* was hang'd at the *Green*, on the Bough of a growing Tree; he knew not by what Law, but the Soldiers were drawn up there, and he thought the Lord *Strafford* was present: And he heard, that the Man was hang'd for a quarter of Beef, which he, and some other Soldiers, had taken away.

The Lord *Dillon* also depos'd, That he saw a Man hang'd at *Dublin Green*, who had been condemn'd by Martial-Law; and he understood, it was for flying from his Colours, and stealing some Beef. That himself, and another noble Lord, became Suitors to the Lord-Deputy's Lady for a Pardon; and she told them, she had endeavour'd it, but could not prevail.

Patrick Gough depos'd much to the same Effect with the Lord *Dillon*, as to the Execution.

The Lord *Ranulagh* sworn.

He depos'd, That he came to the Court-Martial after the Evidence given; but as he remembred, the Lord-Deputy stated the Case to him as follows, viz. That this Soldier came to the Lieutenant to

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demand his Pay ; and the Lieutenant answering he had it not, the Soldier desir'd to be discharg'd ; and the Officer reply'd, Go and be hang'd ; and that thereupon the Fellow went from his Colours, but left his Musquet with the Corporal ; and that the other Fact of Stealing the Beef was plain against him. That this was at the time when a Regiment waited at *Dublin* to be transported to *Carlisle* ; and that the Deponent advis'd he should be try'd in a Court of Law, and not at that Court : And that the Lord *Conway* offer'd some Reasons against the Fellow's being executed for that Fact.

The Lord *Conway* being sworn, depos'd, That he could only remember he was at such a Council of War, and that there was a Man condemn'd to be hang'd : He did not remember any Proposal to refer the Matter to the Civil Magistrate.

The Earl's Defence as to the fifth Article.

To this Evidence the Lord *Strafford* answer'd, that there were twenty Officers present at the Sentence against the Lord *Montnorris*, wherein himself was no Judge ; and he obtain'd from his Majesty that no personal Hurt befall him, but a few Days Imprisonment. That he trusted this was no Crime, or such a one as his Majesty would Pardon, as he had done others. That by his Commission [which was read] he had Power to exercise Martial-Law, *Si Opus fuerit*.

Page 198.

My Lord *Wilmot* was call'd as a Witness for my Lord *Strafford*. He depos'd, That Martial-Law had been exercis'd in *Ireland* ever since he remembered ; and that the Common-Law took no Exception at it there ; neither was it ever complain'd of in Parliament : But it had been us'd so sparingly, that in time of Peace he never knew any executed by it, unless they were Rebels and Fugitives.

Page 199.

Sir *Adam Loftus* depos'd, He had known several Rebels and Outlaws executed by the Provost-Martials by Martial-Law, but no other in time of Peace.

The Lord *Robert Dillon* depos'd to the same Effect.

Sir *Robert Farrer* depos'd, that he heard the Lord *Strafford* say in the Council, He would give no Judgment, nor have to do in the Business against the Lord

Lord Montnorris ; and that he sat a good time with his Hat off. That the Lord Strafford also said, they should not look upon him, but go to the Cause according to their Opinions.

Sir George Wentworth depos'd, That the Lord Strafford sat as a Suitor, and not as a Judge, and bid them all look upon him as a private Man : That he would not vote himself, or suffer the Deponent being his Brother ; and that he sat uncover'd till after the Sentence was pronounc'd.

Page 200.

My Lord Strafford said, he never communicated the Matter to any Man till he produc'd the Letter ; and that then he left the Matter wholly to the Council. That the Lord Montnorris suffer'd but two Days Imprisonment ; and this Proceeding was only to discipline him, and to teach him to govern his Speech with more Modesty.

That he thought he might justify the Sentence against Denewitt, being for the felonious stealing of a Quarter of Beef, and running from his Colours, in Breach of the ninth and sixth Articles of War : That he had been burnt in the Hand before ; and that running from his Colours was Death by Statute-Law.

Page 201.

The Managers reply'd, That though this Fact was not Treason, yet it prov'd his Intention to subvert the Law, which was Treason ; and that as he hop'd for the King's Mercy, so the Commons trusted in his Justice : That it appear'd he procur'd the Sentence (as was charg'd) though he did not vote it : That by *Opus est*, it must be intended when there is *bellum flagrans* ; and that none of his Witnesses had shewn that it was ever executed but upon Rebels and Traitors, and such as would not be brought in. That the Statute which makes Desertion Felony is against him ; for that intended the Party should be try'd by the Civil Magistrate, and then he would have his Clergy.

Managers Reply to my Lord Strafford's Defence as to the fifth Article.

Page 202.

Then the Earl of Ely was sworn, (which the Lord Strafford objected was irregular.)

He depos'd, That forty Years since he was Judge-Martial ; and that the Exercise of Martial-Law was two-fold ; the one Summary, and the other Plenary : The first was committed to the Provost-Martial,

Page 203.

One executed
by Martial-Law
forfeits neither
Lands or Goods.

who fought after Rebels and Kernes in the Woods, who, when he apprehended them, hang'd them up-
on the next Tree : The other was never exercis'd
but in time of War in the Field, and upon such
only as were subject to Martial-Law. That it
would be a great Damage to his Majesty to try
People by Martial-Law in time of Peace, when
there was no Necessity for it ; because the Offen-
der forfeits neither Lands nor Goods : And he did
not remember any Man worth 100 *l.* a Year exe-
cuted by Martial-Law in thirty Years.

Here the Instructions given to the Lord *Falkland*
were read, viz. *Such as may be brought to a Tryal at
Law, are not to be executed by the Martial, except in time
of War and Rebellion.*

One of the Managers said, my Lord *Strafford* did
not so much desire the Blood of the Lord *Montnorris*,
as the Power of Blood, and to have the Peers un-
der his Girdle : That the Blood of their Lordships
Ancestors had been spent in the *Irish* Wars ; but
this way their own Blood might be spent in time
of Peace.

Page 204.

Then the House adjourn'd.

Seventh Day.

Art. 6.

Page 205.
He is charg'd
with disseizing
the Lord *Mont-
norris* of his
Freehold.

Page 206.

Monday, March 29, 1641.

This Article charges him with putting the Lord
Montnorris out of Possession of his Freehold upon a
Paper Petition.

First, a Decree was read, dated the 28th of *July*
1637, whereby, for the Reasons there set forth, the
Lord-Deputy, with the Assistance of the Chief-
Justice of the Common-Pleas, ordered, that *Henry*
Rolston should be put into Possession of certain
Lands.

Then the Lord *Montnorris* depos'd, That being
a Prisoner for not suing out his Pardon on the Sen-
tence of the Council of War, he was put out of Pos-
session of the said Lands, by a Warrant from the
Lord *Strafford*, *August 29, 1637.*

Mr. *Anslow* also depos'd, That the Lord *Mont-
norris* was put out of Possession by a Warrant from
the Lord *Strafford*.

Page 207.
The Earl's De-
fence as to the
sixth Article.

My Lord *Strafford* said in his Defence, That if the
Decree appear'd to be just (as it was most just) he
hop'd

hop'd it would go very far in this Case : But he desir'd his Commission might be read (as it was) which gives him Authority to proceed *Secundum Consuetudines terræ, &c.* From whence he infer'd, that having so great Power, the receiving a Petition, and giving Relief to a poor Body, was no great Fault, it being at most but the exceeding of a Jurisdiction, and by no Construction could be made Treason : And further, that this was no exceeding of a Jurisdiction, but a Power that had always been exercis'd by the Deputies. And he offer'd a Deposition of the Lord Primate of *Armagh's* (who was sick) to prove it ; but the Commons oppos'd the reading of it, having had no Notice of the Examination, and so could not cross examine him ; whereupon the reading of it was wav'd till next Day, to give the Commons an Opportunity of cross-examining him.

Page 208.

Henry Dillon depos'd, he had seen several Orders made by former Deputies upon Petition : And in a Case where his Sister was concern'd, he thought the Examinations were upon Oath. But had none of the Orders to produce.

Robert Lord Dillon depos'd, he had seen several Orders sign'd by former Deputies singly, but not in Cases of Land. That the Clerk of the Council has a Commission for administering an Oath : And that when an Attachment is ordered, an Oath is taken of Course, that the Party is in Contempt. That he never knew the Lord *Strafford* meddle with Matters of Law, but with Matters of Equity he did.

Page 209.

Then an Order of the Lord *Falkland's* was read (on a Petition) concerning Possession of Lands, which was after King *James's* Instructions. And another Order for Payment of a Debt was produc'd, &c.

Page 210.

He further offer'd to show, that the Presidents of the Provincial Courts, who deriv'd their Authority from the Deputies, determin'd Matters on Paper-Petitions ; and infer'd, that if the Deputy could communicate such a Power, it was strange he should not have it himself ; and he said, this shew'd, that these Matters were no Innovations in Law, being practis'd before his Time.

Page 211.

He added, that it would be found necessary to continue this Method of Proceeding in *Ireland* for the Relief of the poorer sort of People, who could not undergo the Circuit of Legal Proceedings, nor were acquainted with them, and must be brought to it by Degrees; and that the Plaintiff in this Case sued in *Forma Pauperis*. — That he had been complain'd of for not relieving the poorer sort of People, as former Deputies had done; which having been represented to his Majesty, he receiv'd a Letter from his Majesty, reciting the Instructions of 1622, and empowering him to relieve the poorer sort, as former Deputies had done, notwithstanding those Instructions, but not to meddle with Freehold, unless in Cases of Equity: [Which Letter he produc'd.]

Then the Decree itself was read, and my Lord *Strafford* observ'd, that the Order was made for the Relief of a poor Man, whom the Lord *Montnorris* had violently dispossest'd of Lands, to the Value of 200*l. per Ann.* not having paid above 30 in Money for them: And that he call'd to his Assistance two learned Judges, when the Cause was heard.

Page 212.

Then he call'd Mr. *Slingsby* to shew, that the Lord *Montnorris* was not imprison'd, by reason of his not suing out his Pardon; but for Contempt in refusing to answer an Information brought by Mr. *Attorney General* in the Castle Chamber. And both Mr. *Slingsby* and Sir *Adam Loftus* depos'd to that effect.

Page 213.

My Lord *Strafford* proceeded, and said, He had his Majesty's Warrant for what he did; that he had observ'd the Rules that guide other Courts of Equity; and though the same thing might be illegal here, it was according to the Laws and Customs of *Ireland*, by which he ought to be judg'd in this Case. And he could not understand how the Enlargement of a Jurisdiction (if it had been so) could be strain'd up to High-Treason. That this was only in the Nature of a Court of Requests, and did not intrench on the Jurisdiction of the Courts of Law.

Page 214.

The Managers
Reply to my
Lord *Strafford's*
Defence as to
the sixth Ar-
ticle.

The Managers reply'd, that the Order mention'd to be made by my Lord *Falkland* concerning a Possession, was expressly for Plantation Lands, in which

which their Power was admitted. But that no Proof had been made that a Deputy alone ever determin'd the Possession of other Lands before.

That his Majesty's Letter was obtain'd on his own Information; neither was there any thing in it that warranted his doing more than his Predecessors had done. And then they instanc'd in a Case of the Lord *Baltinglas*'s, where he had taken upon him to determine the Possession of Freehold Lands.

Page 215.

The Earl of *Cork*, the Lord *Ranulagh*, Sir *Adam Loftus*, and the Lord *Montnorris*, all depos'd, that no former Deputy ever took upon him to determine any Matter of Land in Equity, or otherwise.

Page 216.

The Earl of *Bath* depos'd, that he had often heard a Deputy proceed alone in Cases of Debt, for Relief of poor Men; but never heard them determine Cases of Land.

Then they shew'd, that the Lord *Montnorris*'s Imprisonment was partly for not suing out his Pardon, as well as for Contempt.

Page 217.

Then a Petition of the Lord *Montnorris*'s, praying a Warrant for a Pardon under the Great-Seal was read, and the Lord *Strafford*'s Answer, importing, that when the Petitioner should acknowledge the Justice of his Sentence in the Council-Chamber, his Request should be consider'd.

The Lady *Montnorris*'s Petition to his Majesty was also read, and his Majesty's Reference of the Matter to the Lord-Deputy; wherein he directs, that upon such a Submission as the Lord-Deputy should approve of, the Lord *Montnorris* should have Liberty to come for *England*.

Mr. *Anslow* depos'd, that when the Lady *Montnorris* petition'd the Lord-Deputy, he refus'd to receive her Petition.

They produc'd an Order in a cross Suit between *Robert Parkhurst*, and the Lord *Baltinglas*, and others, whereby certain Lands for 3000 l. paid, and 300 l. to be paid, were decreed to Sir *Robert Parkhurst*. And one *William Brettergh* depos'd, that the Possession before was in one *Grimble*.

Page 218.

Mr. *Glyn* ask'd this Witness, if my Lord *Strafford* did not purchase those Lands? The Lord *Strafford*

ford acknowledged he had them in Trust for a noble Person : But he said the Estate being forfeited to Sir R. *Parkhurst*, the Lord *Baltinglas* desir'd him to undertake the Cause, to see if he could procure of Sir Robert a further Sum ; which was agreed on, and the Order made to both their Likings ; but that Sir R. *Parkhurst* was in Possession of the Estate at that time.

Page 219.

That as to what had been offer'd against his Jurisdiction : If he might give the Lord *Falkland's* Book of Entries in Evidence, there would be found Hearings between Party and Party, Injunctions to the Judges, and Warrants to Sheriffs for Possession of Lands, &c. That my Lord *Montnorris* might thank himself for his Restraint, not making his Submission as his Majesty directed.

And he call'd a Witness, who depos'd, That my Lady *Montnorris* brought but a Copy of the Petition to his Majesty, and he told her he could do nothing on a Copy.

My Lord *Dillon* depos'd, That when the Lady *Montnorris* offer'd the Petition kneeling, the Lord-Deputy desir'd her to rise, and said he could do nothing in it then : That he was going out, and led the Lady to her Coach.

A Manager reply'd, that my Lord *Strafford's* Cruelty exceeded that of other Tyrants ; for he kept the Lord *Montnorris* in Prison till he should acknowledge the Justice of a Sentence which he knew to be unjust. Other Tyrants had found false Witnesses, but to make a Man a false Witness against himself was much more Tyrannical : And said, he thought the Charge remain'd, That my Lord *Strafford* had determin'd things contrary to the Commission and Authority he receiv'd from his Majesty.

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Page 221.

Eighth Day.

Article 8.

Charges him
with imprison-
ing several for
Disobedience to
his Orders.

Tuesday, March 30, 1641.

That he had unlawfully imprison'd Adam Lord Viscount *Loftus* of *Ely*, Lord Chancellor of Ireland, George Earl of *Kildare*, and threaten'd the Lady *Hibbotts*, on Pretence of Disobedience to his Orders, &c.

For

For Maintenance of this Article, the Managers insisted only on the Business of the Lady *Hibbotts*, and drop'd the rest.

Page 222.

And first, a Petition of *Thomas Hibbotts* to the Lord-Deputy was produc'd in Evidence, setting forth, that the Petitioner's Father, Sir *Tho. Hibbotts*, was seiz'd of certain Lands, to the use of himself for Life, and then to the Petitioner in Tail. That the Petitioner being in *England* at his Father's Death, his Widow Dame *Mary Hibbotts*, and Robert *Hoy* her Son, possess'd themselves of his Father's Writings: And that on his Return to *Ireland*, the said Dame *Mary* pretending she had her Life in the said Lands, dealt with him for the Reversion, which he sold her at an under Value, not knowing he had any present Interest in the Lands. That the Petitioner had executed a Conveyance, and acknowledged a Fine; and yet the Lady *Hibbotts* neglected to pay him his Money, which was a Prejudice to him in a Purchase he was making of one *Martin*: He therefore pray'd, that the said Deeds and Fine might be deliver'd up, and the Agreement discharged, having been surreptitiously obtain'd.

Next, the Lord-Deputy's Order, dated *Octob. 15, 1635*, viz. That the Lady *Hibbotts*, &c. should, on sight thereof, forthwith deliver the said Deeds, &c. to Sir *Paul Davis*, and appear at the Council-Table the 20th of *October*.

Then the Decree was read, reciting the Petition; and that the Defendants denying the Fraud, the Plaintiff reply'd, the Defendants rejoin'd; Time was given to examine Witnesses, and a Day set down for Hearing. That the Matter of the Petition appear'd to be true: And thereupon it was decreed the Bargain should be void; and that the Fine, not yet recorded, should be cancel'd; and the Lady should have such Estate as she had before. And to this both Parties were to yield Obedience. Dated *November 24, 1635*, and sign'd by a Majority of the Council.

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The Managers, in opening this Matter, aver'd, that the Decree was made contrary to the Votes of a Majority of the Council; and that upon making the Bargain void between the Lady *Hibbotts*, and the
Petitioner,

Petitioner, the same Lands were purchased by Sir Robert Meredith and others, for 3000 *l.* to the Use of the Earl of *Strafford*, who sold them again to the Lady *Hibbotts* for 7000 *l.* That tho' the Petition was prefer'd in the Name of *Thomas Hibbotts*, he knew nothing of it; and that the Lord *Strafford* advis'd him not to withdraw his Suit; and told him he should have 500 *l.* more than had been offer'd him.

John Hoy was sworn as a Witness.

Exception to a
Witness, because
he was Heir to
the Lands in
question, over-
rul'd.

The Lord *Strafford* objected that he was Son and Heir to the Lady *Hibbotts*, and the Inheritance of the Lands being in him, he was not an indifferent Witness in this Cause: But the Managers answer'd he came in as a Purchaser, and was not interested in the Event of this Matter.

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My Lord *Strafford* reply'd, That he came to seek Relief against the Decree; and tho' it was said this concern'd his Mother; if his Mother was to gain 3 or 4000 *l.* by his Testimony, he could not be presum'd to be very impartial; but my Lord *Strafford* was over-rul'd, and Mr. *Hoy* permitted to give Evidence.

He depos'd, That *Thomas Hibbotts* coming over to Ireland about the seventh of September, the Lady *Hibbotts* agreed with him for the Purchase of his Reversion for 1600 *l.* (she then apprehending she had an Estate for Life in the Premises.) That the said *Thomas Hibbotts* then said he knew the Lands, and was satisfied with that same; and that he design'd to live in England, and therefore chose to sell his Estate in Ireland. — That the Parties went to Dublin to have Articles drawn; but before they were executed, the said *Thomas Hibbotts* flew off, and the said Sir Robert Meredith had offer'd him 2250 *l.* for his Interest; but said, if my Lady *Hibbotts* would give him 2500 *l.* she should have it still; which the Lady agreed to do, and Articles were executed accordingly; that soon after the said *Thomas Hibbotts* acknowledg'd a Fine, and executed a Feoffment, whereby he pass'd away his whole Estate (and the Deponent was about to pay 1800 *l.* of the Purchase Money to one Mr. *Martin*, of whom *Thomas Hibbotts* had purchas'd other Lands;) but the Lady's Council

Page 225.

Council telling her a Recovery was necessary; she desir'd Mr. *Hibbotts* to stay till the first Day of the Term, in order to suffer a Recovery, and she would bear his Charges; but the Deponent answer'd, Winter was coming on, and he would not stay. That upon this the Deponent serv'd Mr. *Hibbotts* with a Subpcena; and then Mr. *Hibbotts* prefer'd his Petition to the Lord Deputy: And the Defendants, in their Answer, mistaking the Lady's Title, set forth she had an Estate for Life, when she had but a Term of Years; her Council was forc'd to ask Forgiveness on his Knees, whereupon they could hardly get any other Council to appear for them.

That the Lord Deputy, understanding Mr. *Hibbotts* was about to agree with my Lady, sent for him, and wish'd him to go on with his Suit; and ask'd him what hurt it would do him to carry 500*l.* more with him into *England*. That they desir'd Mr. *Hibbotts* might be examin'd upon his Oath, concerning this Transaction, and they would be determin'd by it; and that his Examination was almost finish'd, when my Lord Deputy declar'd, at the Council-Board, that he never knew a Matter prosecuted with such Violence as this of the Lady *Hibbotts*; and that if there was any such Examination taken, he would have it damn'd.

Page 226.

That after the Decree was made, the Lord Deputy sent for the Lady *Hibbotts*, and the other Defendants, and told them, if they would not perfect the Reassurance, according to Order, he would commit them for a Month; and if they refus'd it then, he would commit them again, and fine them 500*l.* and double and treble the Fine till they comply'd.

That the Lands were afterwards purchas'd in the Name of Sir *Robert Meredith*, and others; and that when the Deponent paid Sir *Robert Meredith* 7000*l.* for them again, on behalf of his Mother the Lady *Hibbotts*, Sir *Robert* said it was no Advantage to him, he did but take the Money with one Hand and carry it to the Castle with the other; and that his Name was only used as the other Trustees, for the Lord Deputy's Use. And that a Member of the Board

Page 227.

Board told the Deponent, there were Twelve of the Board for his Mother, and but Nine against her.

Mr. *Thomas Hibbotts* was sworn.

He depos'd, That he only petition'd that he might have his Money, and go into the Country; and knew nothing of the Petition here mention'd: And that when he would have dismiss'd his Suit, the Lord Deputy sent for him, and told him, that no Man in *Ireland* should do him Wrong, and it would do him no harm to carry over 500 *l.* more. That the Lord Deputy threaten'd the Lady *Hibbotts* (as the other Witnesses depos'd) and said further, that he knew her Estate was very great, but if it were ten times bigger he would make it crack.

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The Lord *Montnorris* depos'd, that Eleven or Twelve of the Council were for the Lady, and but Nine against her.

The Lord *Cork* depos'd, That the Lord *Strafford* said, when this Business was agitated in Council, that he did not think a Party would have been made against him, for if he had, he would not have brought it to that Table; the Petition being prefer'd to himself.

Sir *Adam Loftus* depos'd, That Sir *Robert Meredith* told him his Name was used in the Conveyance, in Trust for another.

Page 229.

Mr. *Fitz-Garrret* depos'd, That Sir *Philip Percival* had often told him, his Name was only used in the Conveyance, in Trust for the Lord Deputy.

Page 230.
The Earl's Defence as to the Eighth Article.

The Lord *Strafford*, after some time given him to peruse his Notes, enter'd upon his Defence. His Lordship observ'd, that they were still upon the Point of his Jurisdiction; and that what he had said to that Point in the last Article, would serve, in a great measure, as an Answer to this; only that here he apprehended his Case to be stronger, than in the Lord *Montnorris's*; because that in this, the Cause was determin'd by the Council-Board, and the other by himself singly.

Page 231.

That as to the Majority being against the Order, there was only the Testimony of the Lord *Montnorris*; but the Clerk of the Council, who was a sworn Minister, could not have drawn it up if there

had not been a Majority for it; and that it appear'd to be sign'd by a Majority.

Then the Examination of the Lord Primate was read, importing, That it had been usual to prefer Petitions, for 50 Years past, to the Chief Governor.

The Deposition of a sick Witness read.

That it was the constant Practice for the Clerk of the Council, who was a sworn Minister, to draw up the Opinions according to the Majority of the Board.

That he never knew the Lord Deputy to press any Man to go against his Opinion.

And that he had heard him often profess he had but a single Voice.

Robert Lord Dillon depos'd, That the Clerk of the Council draws up the Orders according to the Sense of the major Part of the Council, and presents it to the Board to peruse; That the Clerk drew up the Order in dispute, and it was sign'd by some who dissented, as is usual when it has been voted by a Majority; which induc'd him to believe there was a Majority for it, tho' he did not number the Votes. That himself voted for it, but he did not remember my Lord Strafford urging any one to vote contrary to his Opinion, or to over-rule it. That in a Case of my Lord Ranulagh's, where they were equally divided, my Lord Strafford would not insist upon his casting Vote, but refer'd the Matter to a Member who was absent, who gave it against his Opinion, and the Order was drawn up accordingly. That he did not remember any Exception taken at the time of the signing the Order, or at any time after.

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Sir Philip Manwaring depos'd, That he was at the Council-Board, and was very confident there was a Majority for the Order; and was confirm'd in it, for that there was no instance of an Order drawn up against the Sense of the Majority; and that the Clerk was a sworn Minister, and a very honest and careful Man. And that no Member at the Board took exception at the signing of it.

Then the Lord Strafford proceeded, and said, as for his commanding the Lady to perform the Order, on pain of being fin'd and imprison'd; it were to

Page 233.

to no purpose to make Orders, unless they could enforce Obedience to them. That one of the Witnesses, Mr. *Hoy*, was a Party in the Cause; and as for Mr. *Hibbotts* he was a weak old Man, who testified things backwards and forwards, and his Evidence could determine nothing. However, the threatening to fine one was not Treason, it being usual in Chancery, in case of Contempts. That he must deny the Lands were convey'd to his Use, as he had done in his Answer; and that those who attested it, only said it from the Report of others, who ought to have attested it themselves.

And that as to the Injustice of his Decree, he did not doubt but to clear himself of that, when he came before their Lordships in a proper Place.

The Managers
reply to the
Earl's Defence
as to the Eighth
Article.

The Managers reply'd, That his Lordship had exercised a Jurisdiction upon the Estate of this Lady, without any colour of Law. And tho' he alledg'd it was no Treason, yet it conduc'd to prove the general Charge of subverting the Laws. That the Lords of the Council had nothing to do in Matters of Freehold or Inheritance, unless it concern'd Plantations or the Church, or was specially recommended.

Page 234.

Page 235.

Then they call'd their Witness Mr. *Hoy* again, who depos'd, That the reason he did not complain sooner, was, that when he was coming over for that purpose, Sir *Paul Davis*, and the Master of the Wards, dissuaded him from it, telling him of my Lord Deputy's great Power; and that he might as well run his Head against a Rock, as seek Remedy against him as the Times then went.

Page 236.
Ninth Article.
Charges him
with giving
Warrants to the
Bishops, to im-
prison those who
disobey'd their
Orders.

This Article charges him with assuming a Power above Law, giving Warrants to the Bishops and their Officers, to attach and imprison the Bodies of those, of the poorer sort, who refus'd to obey any Ecclesiastical Decrees or Orders; and they instance in one that was given to the Lord Bishop of *Down* and *Connor*.

A Copy of the Warrant to the Bishop of *Down* was produc'd, but the Lord *Strafford* objected to the reading of it, averring, they ought either to have brought the Original, or some Body that would have prov'd it to be a true Copy.

Then

Then Sir James Montgomery was sworn.

Page 237.

He depos'd, That he had seen the original Warrant, and he believ'd it to be a true Copy, as well in Words as Substance; but could not say he ever examin'd it with the Original; however, the Lords over-rul'd the Exception, and order'd it to be read, being to the effect set forth in the Article.

A Copy of a Warrant not prov'd to be examin'd with the Original, allow'd to be read.

Sir James Montgomery further depos'd, That he had seen several Warrants under the Hand of the Bishop of Down's Chancellor, directed sometimes to the Constables, and sometimes to his Apparitors with their Assistance, for apprehending Persons (twenty or thirty in a Warrant) and that he had known them executed with great Cruelty; sometimes wounding, beating and imprisoning the Parties. And that this time Twelve-month, the Depo-
nent was charg'd himself to be assisting at the Execution of one of these Warrants.

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The Managers observ'd, that in this Instance, he had made Acts of State to exceed Acts of Parliament. For whereas by the Statute the Subject being cited into the Ecclesiastical Court, could not be imprison'd till a Writ *de Excommunicato Capiendo* issued; by my Lord Strafford's Warrant he was apprehended, if he appear'd not on Citation; and Knights and Men of Eminency were call'd in to assist at the Execution of them. That he did not only take this Power himself, but gave it to others; and therefore it was high time to accuse him of subverting the Laws of Ireland.

The Earl answer'd, That such Warrants had been usually granted to the Bishops of Ireland; however, he had granted only this to the Bishop of Down; and hearing Complaints of the Execution of it, he call'd it in long before his Impeachment.

The Earl's Defence, as to the Ninth Article.

The Lord Primate's Examination was read.

Page 239.

Importing, that the Bishop of Meath told him he had a Warrant of Assistance from a former Lord Deputy.

Robert Lord Dillon depos'd, he had heard Writs of Assistance had been granted by former Deputies.

Mr. *Thomas Little*, his Lordship's Secretary, depos'd, That he had seen an original Warrant of my Lord *Falkland's*, by which this was drawn. And that this was the only Warrant the Lord *Strafford* made.

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My Lord *Strafford* desir'd their Lordships to consider, that in Things concerning the *Irish* Charge, it was impossible for him to have his Witnesses on so short Notice of Tryal; otherwise these Things, being so notorious, might have been easily clear'd. That he follow'd the Practice of those who went before him; and if it were not altogether agreeable to Law, he hop'd every Mistake of the Law did not amount to Treason, for then there would be more Prosecutions for Treason, than Trespasses, in *Westminster-Hall*.

The Managers
Reply, as to
the Ninth Ar-
ticle.

The Managers reply'd, That tho' this single Act was not Treason, yet added to other exorbitant Proceedings, it was a strong Evidence to prove his subverting the Laws.

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Ninth Day.

Tenth Article.

Charges him
with farming
the Customs,
and raising the
Rates.

Wednesday, March 31, 1641.

This Article sets forth, That he had procur'd the Farm of the Customs to his own Use, and for his own Lucre had caus'd the native Commodities of *Ireland* to be rated higher than in the old Book of Rates, particularly Hides and Wooll, to the great Oppression of the Subject.

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In maintenance of this Article, the Managers first produc'd a Lease of the Customs from King *James* to the Duke of *Buckingham*; and afterwards another Lease to the Dutcheſs of *Buckingham*, of which the Earl afterwards had an Assignment, which they shew'd was attended with greater Advantages to the Farmer, than the first Lease.

Page 245.

Then they proceeded to show that the Customs by the old Book of Rates amounted to but 10 or 12000 *l.* a Year; and by the new Book, to 55 and 57000 *l. per annum.*

That the true Value of Hydes was, at most, but six Shillings a Hyde, and Wooll eleven Shillings per Stone. But that the Custom of Hydes was taken after the Rate of twenty Shillings the Hyde; and of

of Wooll at the Rate of thirteen Shillings and four Pence the Stone.

The Lord *Strafford*, in his Defence, desir'd that the Charge might be read again; and observ'd, that there was nothing in it, that, by any Law, could be construed treasonable. Page 246.
The Earl's Defence, as to the Tenth Article.

That they had been told what his Majesty lost by a Contract with the Dutchess of *Buckingham*, which, he conceiv'd, could not concern him, being no Party to it; however, by their own showing, there was a 20000 *l.* Fine, and an Increase of Rent 1350 *l. per annum*, which was some Consideration for it: That the Rates appear'd to be rais'd the 24th of *March*, 7 *Car.* and he was not a Partner in the Lease till the 21st of *April* after, so that the Book of Rates was not rais'd by him, but by them who manag'd the Business between the King and the Dutchess of *Buckingham*; and unless they could show a Book of Rates that was made the 9 *Car.* as they had charg'd in the Article, or since he was interested in the Farm, the raising them could not affect him, any more than whether they were justly laid, which he believ'd might be made out too, if he had time to produce Proofs. And if the Testimony of Merchants, who speak for their own Advantage, is to be admitted in this Case, the Customs will produce little. That this Book of Rates was settled by the then Lord Treasurer, and, he believ'd, very fairly. Page 247.

That it was not voluntarily that he took a Share in the Farm, but he was, in a manner, compell'd to it. That his Majesty had from time to time been acquainted with the Increase; and indeed it did rise beyond all Imagination, the Customs, when he and his Partners enter'd upon them, amounting to but 12000 *l.* a Year, and now were advanc'd, as had been prov'd, and by that they might judge of the Truth of the Remonstrance from *Ireland*, which complain'd of the Decay of Trade.

Then he call'd the Lord *Cottington* as a Witness.

He depos'd, That in the 7th Year of the King, *Williams* and his Partners refus'd to take the Farm of the Customs at 15500 *l.* Rent, and 8000 *l.* Fine; which my Lord *Portland*, then Lord Treasurer, was

Page 248.

concern'd at; but that *Ingram* and his Partners afterwards took it on those Terms, paying only 100 *l. per annum* more. That the Lord *Portland* intreated the Lord *Strafford* to become a Partner, to encourage Sir *Arthur Ingram* and the rest to take it; but he refus'd it as not proper for the Deputy; but the Lord *Portland* procur'd his Majesty to lay his Commands upon him before he comply'd.

Sir *Arthur Ingram* depos'd, That it was not himself but his Son *Arthur Ingram* that was a Partner in it, and it was an Encouragement to have the Deputy a Partner; but his Son was put out in three Years, when the Thing came to be a Matter of Profit.

Page 249.

My Lord *Strafford* said his Majesty gave a Consideration for that Share, and had it himself. That the Customs were an Inheritance of the Crown in *Ireland*, and five Eighths were entirely the King's, besides the Rent the Farmers paid; and he hop'd they would hear the King's Council before they concluded it.

Page 250.

That tho' he was charg'd with raising the Customs, he had his Majesty's Letter in the Year 1637, for the raising them; and tho' he had then a fourth Part, he, and the whole Board, dissuaded his Majesty from the raising them, as he prov'd by my Lord *Dillon*.

Managers Reply, as to the Tenth Article.

Page 251.

Serjeant *Maynard* reply'd, That the Dutcheffs of *Buckingham's* Patent was in *March 7 Car.* and the Lord *Strafford's* Lease in the *April* following; and insinuated, that no Advantage was intended the Dutcheffs but to the Earl, for she never paid a Penny Rent, or receiv'd any Profit. That tho' the Rates were not rais'd after he had his Lease, he suppos'd they were rais'd by his Advice, and in order to his taking of it. That if they did lay the Offence the ninth Year, and it fell out to be at another time, it was not material since the Thing was prov'd to be done. That tho' Tunnage and Poundage was the King's Inheritance, he ought not to extort from the Subject to give to the King. And that the Subject was like to have Justice, when the Lord Deputy, to whom they should appeal, was a Party.

That he thrust Sir *Arthur Ingram* out when any thing was to be got, and in eight Years gain'd
30000 *l.*

30000*l.* to himself; and no wonder if he who gain'd so much, would seem to interest his Majesty in part, that his Share might be the better assur'd to him. And as to his refusing to raise the Rates on the King's Letter, it appear'd the whole Board dissuaded it, tho' indeed it was to be wonder'd at he did not take them down. He took notice also of an extravagant Clause in the Grant, that it should be good notwithstanding any Act of Parliament; and concluded that here was not only an Enhancement of Rates, to the Oppression of the Subject, but the King was deceiv'd, and his Purse drain'd to fill my Lord *Strafford's*.

Page 252.

In this Article the Earl is charg'd with monopolizing Tobacco, &c.

Page 401.
Twelfth Article.

That he monopoliz'd Tobacco.

Page 402.

For maintenance of it a Proclamation was read, setting forth, That whereas, through the general Liberty hitherto given of importing Tobacco, unwholsome Tobacco was often brought over, none should presume to import it for the future without special Licence.

Another Proclamation was also read, forbidding Tobacco to be sold by wholesale, but in Rolls seal'd at each End, by Persons appointed to seal it: And that the King's Officers should have six Pence a Pound for what they seiz'd unseal'd; and that the Persons having such unseal'd Tobacco, should be committed, till they gave Security to answer it to the Council.

Page 403.

Then *Thomas Crosby* was sworn.

He depos'd, That since the 11th of November, 1637, Ships that brought Tobacco were not permitted to land it, unless they would pay two Shillings a Pound Duty; and that before this Duty, Tobacco was generally sold at six Pence or seven Pence a Pound.

Patrick Allen depos'd, That before the Proclamation they paid but six Pence or seven Pence a Pound for Tobacco, but now two and three Shillings a Pound, tho' the Patentees bought it of the Merchant for six Pence or seven Pence a Pound.

Page 404.

John Welsh was sworn,

And depos'd, That, by his Computation, 500 Tun of Tobacco was imported yearly, which, at

two Shillings and fix Pence a Pound, comes to near 140000 l. And that he saw *Patrick Wells*, a Merchant of *Waterford*, and *Richard Withwich* set in the Pillory for selling unseal'd Tobacco.

Page 405.

Patrick Gough depos'd, That he had heard of sixty at a time committed and sentenc'd for having unseal'd Tobacco.

Then an Article out of the *Irish Remonstrance* was read, and Mr. *Plunkett* a Member depos'd it was a true Copy, and according to the Vote of that House.

My Lord *Strafford* demanded of Mr. *Plunkett* what Proofs were offer'd to the House when they voted it.

Mr. *Glyn* objected to the Question; and said there was no question to be made of the Truth of a Thing done by all the Commons of *Ireland*. — Then the Article was read, viz.

Part of the
Irish Remon-
strance read as
Evidence.

Page 406.

The Earl's De-
fence, as to the
Twelfth Ar-
ticle.

“ That the Tobacco bought at low Rates is sold
“ at excessive Rates, whereby Thousands of his
“ Majesty's Subjects are destroy'd, and most part
“ of the Coin of this Kingdom engross'd into par-
“ ticular Hands; insomuch that the Profits arising
“ thereby surmount his Majesty's Revenue, certain
“ or casual, within this Kingdom, and yet his Ma-
“ jesty receives very little Profit by the same.

My Lord *Strafford*, in his Defence, produc'd a Petition of the House of Commons, desiring that the Leases of the Farms (among which Tobacco was one) might be taken in and compounded for, and converted to the King's Benefit, that the Revenue might be able to bear the Charge, and the Subject eased of Contribution.

Page 407.

Then he produc'd a Grant from King *James*, of the Duty on Tobacco, for ten Pounds a Year, and appointing eighteen Pence a Pound to be receiv'd for every Pound of Tobacco; and he show'd another Lease for 21 Years, to Mr. *Lyne*, of the said Impositions, at 20 Pounds *per annum*. And he produc'd the King's Letter, dated *July 18, 12 Car.* directing the settling this Business, being a Warrant for issuing the abovesaid Proclamation. And he produc'd a Proclamation issued about the same time in *England*, prohibiting the planting of Tobacco

Page 408.

or landing it in *England* or *Ireland*, except at *London*, on pain of Confiscation, &c. which my Lord *Strafford* observ'd was to the same effect with the Proclamation with which he was charg'd.

He next produc'd the Contract itself, made with the Patentees, *Carpenter*, *Bartholomew*, *Peatly* and others; reciting, that they having made an humble Petition, setting forth, That no Order had hitherto been taken for bringing in good Tobacco, or Quantities proportionable to the Consumption, so that either the Price was enhanc'd, or the Markets glutted; and desiring they might have a Lease of the Tobacco for eleven Years, paying 5000*l.* per annum the first five Years, and 10000*l.* for the six last, paying only three Pence Impost; and that on the Lord *Strafford*'s leaving his Government they might be at liberty to surrender their Grant. And that Tobacco should be solely imported by them, and they license the Sale; and no Tobacco be planted in *Ireland* during the Term, &c.

A Warrant was issued for the making a Grant pursuant to the Prayer of the said Petition, dated November 7, 1637.

My Lord *Strafford* added, That nothing was resolv'd in this Matter, without advertizing his Majesty of it: And that he, with the rest of the Council, did sign the Proclamation; and he conceiv'd that it appear'd now to be done on very good Warrant, he having the King's Command in the Point, and it being only temporal, till an Act of Parliament might be had to make it perpetual: And that a Proclamation thus issued, till a Parliament comes, he conceives very justifiable, it having been the usual Practice.

That as to the Sentences, on those who offended against the Proclamation, he is not charg'd with any of them, tho' he believes they were very just, some of them appearing to have been for Perjury. As to any Fines that were set, they were only in *Terrorem*, there being little or nothing of them paid; and that he thought the Power of punishing those who transgress'd Acts of State, was fully prov'd in the other Articles.

That as to Tobacco being sold at unreasonable Rates, he was not privy to it; but the Contractors stood upon their Justification, and said they would make it appear that the Planters have no where so good a Value, and they sell at as moderate Rates as ever was sold heretofore, and much better Tobacco. That their Proof of that great Profit amounting to 100,000*l. per annum*, which made the great Cry, was weak enough; and it was so far otherwise, that the Contractors protested the Country was so abus'd they could get but little by it. And it appear'd that when Sir George Ratcliff came from Ireland, they were 6000*l.* out of Pocket.

Page 410.

That of late one of the Contractors was shut up in Prison; and had not their Ministers been laid up and abus'd, he should have prepar'd a particular Account. That if they would talk of tyrannical and arbitrary Government [*Here the Commons expressing some dislike, my Lord Strafford said he complain'd of Ireland.*] And he desir'd two Orders of the Irish House of Commons might be read, who had seiz'd on the Tobacco, and given Orders for the Sale of it, by what Authority he knew not.

The Earl's
Eff. & seiz'd
by the Irish
House of Com-
mons.

The Managers oppos'd the reading them, and desir'd their Lordships would vindicate the Honour of the Commons of Ireland from these Aspersions.

Page 411.

At length the Orders were permitted to be read; which reciting that the Lord Strafford and Sir George Ratcliff were impeach'd of High-Treason; they therefore order'd the Contractors to pay in all the Money rais'd on the Monopoly of Tobacco, and bring in the Securities they had taken to such Persons as they appointed; as also their Letters Patents to be consider'd of by them, and they order'd the Tobacco in the Magazines to be seiz'd and sold, &c. The first Order was dated February 27, 1640, and the other March 3, 1640.

Page 412.

My Lord Strafford observ'd that the Persons employ'd being imprison'd, and what they had seiz'd on, it was impossible for him to give a more particular Account of this Matter. That he had done nothing but what was Warrantable; and that it's being a good or bad Bargain was not material; he could not conceive the Goodness of a Bargain
could

could make it treasonable; Tho', at the time of the Contract, those who now complain'd of it, had so little Notion of the Advantages that might accrue by it, that they refus'd to become Partners in it.

That admitting this were a Monopoly in the worst Sense, tho' he had known such voted against in the House of Commons, he never heard them to be adjudg'd treasonable till now — That in the Estimate that had been made of the Value of Tobacco, no Consideration was had of the Price, the Customs, the Losses and Charges; and the Remonstrance of the Commons was only that they conceiv'd it to be so, which was all the Testimony given of the Value.

Mr. Serjeant *Maynard* reply'd, That he did not apprehend any Thing tyrannical in the Orders of the House of Commons in *Ireland*. That King *James's* Lease, where only an Imposition was laid on Tobacco, was not a Precedent for him, for here all are prohibited to sell Tobacco without the Licence of the Patentees.—

The Managers
Reply, as to
the Twelfth
Article.

Here my Lord *Strafford* interposing, and averring, That any one who would pay the Duty might bring in what Tobacco he would; Mr. *Maynard* said that was more than the Tobacco was worth; and that the Patentees having it without those Duties, were two Shillings in the Pound before another Man. The Serjeant went on, and said the Commons Petition that some Course might be taken for regulating of Debts, would not justify what had been done in this Case. — That his Majesty's Letter was obtain'd on Misinformation of my Lord *Strafford's*: And that there being the like Monopoly in *England* could not justify that in *Ireland*, but that it was the more mischievous, one strengthening the other. And that when ill Ministers took upon them to vouch the sacred Name of Majesty for a Monopoly, his Majesty was innocent, but they deserv'd the greater Punishment for justifying it under such a Colour. — That my Lord *Strafford* had the sole Benefit of this Matter, and the Persons nam'd in the Contract were but his Servants. And that a Proclamation could not make a temporary Law, to raise a Monopoly, and take away

Page 414.

away the Subjects Goods. — That tho' Tobacco yielded no where so good a Price as in *Ireland*, that was nothing to the Point of buying, where other Subjects must give two Shillings, and my Lord *Strafford's* Agents have it for six Pence, and sell it again for two or three Shillings. That tho' my Lord *Strafford* made light of it, this was a great Breach on the Property of the Subject; and if a Grant of sole Emption was endur'd in this, it might be carried on to every thing else.

My *Glyn* added, That tho' the Commons might be desirous of disengaging the King's Revenue, that his Majesty might make the best of it; it was not that others should feed upon him, and he in the mean time want.

Page 415.

That he was guilty of a double Treason; First, in arbitrarily laying a Tax upon the Subject (and if he could lay this, he might a greater) Secondly, in depriving the King of his Revenue, under colour of advancing it, whereby his Majesty was depriv'd of the means which should enable him to protect himself and his People. And that his daring to reflect on the Parliament of *Ireland*, as tyrannical, in the Presence of the Parliament of *England*, show'd what he would do of an *English* Parliament, in time of a Recess.

Page 416.
Tenth Day.

April 1, 1641.

Thirteenth Article.

That he ingross'd the Flax Manufacture.

He is charg'd, in this Article, with ingrossing all the Flax in the Kingdom, and enjoining it to be wrought in such a manner as the Natives were unpractis'd in; and causing all such Flax and Yarn to be seiz'd, as was order'd in other manner than he had prescrib'd.

Page 417.

The Proclamation enjoining these Things was first produc'd in Evidence; and then the Lord Deputy's Warrant, commanding the Justices of Peace to assist the Officers to search for and seize such Yarn as was prohibited in the Proclamation.

Benjamin Croky was sworn,

And depos'd, That his Deputy did make a Seizure of Yarn, in pursuance of such Warrant; and that *Carpenter*, my Lord *Strafford's* Steward, had it of him, and converted it to my Lord's Looms;

Looms; and he thought part of it was to the Steward's Use, but the greatest Part to my Lord's.

Sir John Clotworthy was sworn.

He depos'd, That his Assistance being requir'd on such Warrant, he examin'd as well the Officers, as the Party on whom they would make their Seizure; and finding an Abuse in the Business, he sent up the Examinations with a Letter, giving an Account of the Matter. That he thereupon receiv'd a threatening Letter from Mr. Little, my Lord's Secretary, telling him, *It was very ill taken that he interpos'd where my Lord Deputy was concern'd*; and that my Lord Ranulagh had much ado to prevent a Serjeant at Arms being sent for him.

Page 418.

My Lord Strafford desir'd the Letter might be produc'd; but Sir John answer'd he did not keep it.

My Lord Ranulagh depos'd, That he remembered he apply'd himself to Sir George Ratcliff, and prevented Sir John Clotworthy's coming into any Trouble at that time.

My Lord Ranulagh depos'd, That at *Athlone* Fair, Complaints being brought to him of an Officer's seizing great Quantities of Yarn, he sent for the Person who seiz'd it, who produc'd the Lord Deputy's Warrant, and said he had seiz'd about a Cart-load, and would carry it to *Dublin*, where he had Directions to deliver it to Mr. *Carpenter* the Lord Deputy's Steward: That the Deponent meddled not with it, but sent a Person to *Dublin* who had immediate Access to the Deputy, and acquainted him with the Abuse in the Execution of the Warrant.

Page 419.

Sir John Clotworthy depos'd further, That upon sending these Officers abroad, the Markets were generally deserted; That it was the most considerable native Commodity they had, and the People not daring to bring their Yarn to Market, sold it privately in their Houses; and then the Officers requir'd the Assistance of the Justices of Peace, and broke open their Chests; but the Deponent had caused the Yarn taken away to be restor'd to the Proprietors in the Town of *Antrim*. That these Seizures occasion'd great Disorders; for they took
away

away what the People had provided to pay their half Years Rent, and Multitudes of People were starv'd.

Page 420.

Then the *Irish* Remonstrance was read, setting forth, That the People died by Thousands, by reason of the abovesaid Oppression, as might be prov'd by 20000 People, if it were doubted; and that the Judges of Assize procur'd the Lord Lieutenant to recall those Proclamations.

Page 421.

Mr. *Fitz-Garret* depos'd, That this was the greatest Manufacture of the Kingdom; and he was inform'd by a Man of Quality in *Ulster*, that the whole Province was impoverish'd by reason of the said Proclamations, and many Thousands famish'd, and great Cruelties were used in the Execution of the said Warrants.

The Earl's Defence as to the Thirteenth Article.

The *Irish* draw by Horse-Tails, and burn their Corn from the Straw.

My Lord *Strafford* answer'd, That they had mention'd some Things tending to Oppression, but nothing towards Treason. That the Intent of these Proclamations was certainly good, being to reform an Abuse, and better the Commonwealth. That they were sign'd by the Lord *Loftus*, the Lord Primate, the Archbishop of *Dublin*, the Earl of *Ormond*, &c. and the two Chief Justices, tho' they were imputed only to him. That divers other Abuses had been reform'd by Proclamation before, such as drawing by Horse-Tails, and burning the Straw to separate the Grain from it; and that this was to render a Manufacture valuable, which, as they manag'd it, was worth nothing to them.

Page 422.

That he would have promoted this Manufacture there, in regard to the *English* Nation; for he observ'd the clothing Trade (which very much increas'd there) would, in time, be a great Prejudice to *England*. And that in the Attempt he was a Loser 3000 l.

That if the Officers had been guilty of any Abuse, they must answer for it; and that *Croky*, who was produc'd as a Witness against him, was himself the most obnoxious; and that upon Complaint of the ill Execution of the Warrants they were recall'd.

That there was Proof only of one Cart-load of Yarn, seiz'd in *Connaught*, and he could not apprehend

hend how it should come to pass that Multitudes should be starv'd in *Ulster* thereupon, as Sir *John Clotworthy* had depos'd. Nor could he conceive that the Cloth made in his Looms, the Value whereof did not amount to 1700 *l.* *per annum*, should occasion the starving of Thousands. That he was griev'd to hear the Remonstrance of the Commons in *Ireland*, for he thought he deserv'd better of them, having ever endeavour'd the Prosperity of that Kingdom. However, it was but a Charge, which could not be made a Proof of a Charge against him. And he hop'd there might come a time when he should be better understood, as well there as here.

Page 423.

That Mr. *Fitz-Garret* testified nothing but a Report, and their Lordships had heard it reported too, but hop'd they would credit it no further than had been prov'd.

Mr. *Maynard* reply'd, that a good Intention would never bear his Lordship out in such Acts of Oppression; as the taking away of Mens Goods, and the applying them to his own use. That there could not be greater Evidence against him, than his maintaining, in the Face of the Kingdom, that a Proclamation was a Temporary Law, by which Mens Houses might be broke open, and their Goods taken away; and this prov'd what they charg'd him with, *viz.* That he would erect a Government that should depend meerly upon Will. And though his Lordship said, he had offended with good Company, he himself was the principal: And though they were to blame to be guided by him, it was no Extenuation of his Crime that he had drawn others in.

The Managers
Reply as to the
13th Article.

He added, that the Proclamation did not appoint a Regulation, but a Seizure of the Subjects Goods immediately, giving them no time to vend what was in their Hands: That he was to answer for the Actions of his Agents, who seiz'd for his Use, and brought the Goods into his Looms: That he could not excuse the Mischief he had done, by saying, he call'd in his Warrants, and went no further. That if the seizing a Cart-load could not starve a thousand Men, he concluded from thence,

Page 424.

thence, that a great deal more was seiz'd, more than a thousand being starv'd. That in the Matter of Tobacco, he had produc'd a Command, but no such thing here; and though he alledg'd, that Tobacco was a superfluous thing, this being for Cloathing could not be deemed superfluous.

Page 425.

Page 426.

Art. 15.

Charges him with levying War on his Majesty, and his Subjects.

Page 427.

Page 428.

A Copy of *Savil's* Warrant not admitted to be read; it not having been examin'd with the Original.

Page 429.

Page 430.

Page 431.

The Earl is charg'd in this Article with imposing great Sums of Money on the People, contrary to Law, and levying them by a Military Force; which is stil'd, *Levying War within the said Realm against his Majesty and his Liege-People there*. To prove it, Mr. *Savil*, the Serjeant at Arms, was sworn, and a Copy of his Warrant from my Lord-Deputy was offer'd in Evidence: But my Lord *Strafford* excepted to the Copy, as not fit to be produc'd in a Charge of Treason, the Witness acknowledging he did not examine it with the Original. Whereupon the Lords adjourn'd to their House, to consider of it; and at their Return the Lord-Steward reported, that their Lordships did not think fit it should be read, because it was not attested; and it was laid aside. Then the Managers demanded of Mr. *Savil*, what he knew of any Soldiers being quartered on the Houses and Lands of those who have been complain'd against by Paper-Petitions, in case of Non-appearance, or Non-performance of Orders: And what Warrant he had for doing it.

Mr. *Savil* depos'd, That the Warrant by which he laid Soldiers on Delinquents Lands was deliver'd to him by my Lord-Deputy's Secretary Mr. *Edmonds*, under the Lord-Deputy's Hand. That the Method observ'd on a Complaint was this: My Lord issued his Command, which was serv'd on the Party complain'd of: And on Return of that, Oath being made that the Party gave not Satisfaction, a Warrant issued to a Pursuivant; and if he could not find the Party, or he was rescued out of his Hands, on an Oath taken to that effect by the Pursuivant, a Warrant was given to the Serjeant at Arms, who went in Person, or sent his Deputy three or four or five times to the Party. And then, if he could not be had, the Serjeant apply'd himself to the chief Officer of the next Company or Garrison, and

and show'd him the Deputy's Warrant, commanding him to raise such a Number as he shall think fit, and march to the House of the Party complain'd of, till they receive further Satisfaction; that he had a general Warrant for laying these Soldiers, but they might not march without an Officer; that they went with their Arms, and were maintain'd at the Charge of the Party where they lay. That the Deponent had laid Soldiers on several Persons, and named three in particular; that the Number of Soldiers was left to his Discretion; that the greatest Number he laid was five, and an Officer, but generally but two or three; and they were always Foot, except once; and that it had been done in all Parts of the Kingdom.

Page 432.

Patrick Gough was sworn.

He depos'd, he had seen such a Warrant sign'd by the Lord-Deputy, and directed to Serjeant *Savil*, and knew Soldiers laid upon *Richard Butler*, and, as he understood, it was for not giving Obedience to my Lord *Strafford's* Orders: And he had heard of several Insolencies committed by Soldiers on one *Berne's* Land.

Page 433.

Richard Welsh was sworn.

He depos'd, That he had seen one of the above-said Warrants, and knew Soldiers laid on one *Dillon* for Contempt; and that the Suit was on a Paper-Petition for 100 *l.* as he remembered.

Page 434.

Patrick Cleare was sworn.

He depos'd, That he had a Letter sent out of the Country to petition for taking off some Soldiers who were sent to an old Woman's of eighty Years of Age; and that upon an Affidavit of her Age, the Soldiers were taken off: That the Substance of the Petition against her was, that the Petitioner was damaged 500 *l.* by Reason of her breaking her Covenants; and she had been commanded to pay the 500 *l.* or shew Cause; and upon her Neglect, the Soldiers were sent, where they lay three or four Weeks till he got them discharg'd, as above-said.

Page 435.

Nicholas Ardah depos'd, that Serjeant *Savil* laid two or three Soldiers of the Lord-Deputy's own Troop upon *Thomas Cusacke* of *Dublin*, for not obeying

Page 436.

ing an Order. That a Merchant of *Manchester* sued the said *Cusacke*, by Paper-Petition for a Debt, and the Soldiers were laid at his House three or four Days till he surrendred himself.

Edmond Berne was sworn.

He depos'd, that about the 17th of *October* 1639, ten of the Lord-Deputy's Foot-Guards, with an Officer, came to his House, in the County of *Wicklow*, about twelve Miles from *Dublin*, where they lay fifteen Days; that they consum'd all his Goods, thrash'd out three Ricks of his Corn, worth 50*l.* and when they had spent all his Provision, sent part of his Corn to the next Market, which they sold for Tobacco, *Aqua Vitæ*, and Beer; and treated the Women of the Town, and would have ravish'd some of them, if the Townsmen had not rescu'd them. That they broke open his Tenant's Doors, and destroy'd all his Poultry, and Provisions: And after that broke open several of the Town's Peoples Houses, and took away their Victuals and Poultry, and beat them. That when they had destroy'd the Deponent's Fuel, they burnt his Partitions, and his very House-Door, and sold all his Household-Goods; and the Deponent was forc'd to leave his Wife and Children to his Friends and serve as a Soldier in the *Low-Countries*. That his Damage was not less than 500*l.* being forc'd to break up House, and was never able to keep House since.

Page 437.

He acknowledg'd, that the Debt might have been compounded for 5*l.* but he did not think it lawfully due, and therefore did not pay it, which occasion'd this Trouble. And that my Lord-Deputy was gone for *England* before this happen'd: But the Managers observ'd, it was done by Vertue of a dormant Warrant Serjeant *Savil* had from the Deputy.

Mr. *Kennedy* depos'd to the same Effect with *Berne*, only he said, that it was *Piggot*, the other Serjeant at Arms, that laid the Soldiers upon *Berne*: And that he never heard of such a Course taken before my Lord *Strafford's* Time.

Page 438.

Mr. *Little*, my Lord *Strafford's* Secretary, being examined, if ever he made out any such Warrant to *Piggot*, or any other, for raising Soldiers after this

this manner by my Lord *Strafford's* Direction : He answer'd, that he never knew or heard of any such Warrant.

The Lord *Ranulagh* depos'd, that one *Davis* petition'd the Council for the taking off some Soldiers, which the Deponent was told were laid by Vertue of such a Warrant. That indeed before the Lord *Strafford's* Time there was a Custom for laying Soldiers on the Relievers of Rebels, and in case of Delinquency, and for levying Contribution-Money, and the King's Rents ; but he never knew Soldiers laid, to compel Obedience in Civil Causes between Party and Party before.

Page 439.

My Lord *Strafford* demanded, if the Lord *Ranulagh* had not, when he was a Captain in the Army (before his Government) levy'd part of the Money due to him by his Soldiers on a Warrant from the Lord-Deputy, and Vice-Treasurer. Which the Lord *Ranulagh* confess'd he had ; and said, it was at the Request of the Country to his Majesty that this Method was taken for raising the Contribution-Money on the Defaulters.

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Mr. *Palmer* said, this Power the Lord-Deputy had assum'd of hearing Causes on Paper-Petitions, and compelling the Subjects by Acts of Hostility to obey his Orders, was a *Levying War against our Sovereign Lord the King within his Realm*, which was Treason by the 25th of *Edw. III.* Also by a Statute in *Ireland* the 18th of *Hen. VI.* this very Offence of selling Soldiers by Lords or others,, on the King's People, without their Consent, was Treason ; and the said Act was read, being to that effect.

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My Lord *Strafford* answered, that what had been open'd to be so extraordinary, he must justify as very ordinary and frequent in the Kingdom of *Ireland* : That in all Times the Officers and Soldiers of the Army there, have been the chief Hands in executing all the Justice of the Kingdom ; and that the King's Writ could not be executed there, but by their Power and Assistance : But before he proceeded to his Proofs, he premis'd, That by Rebels and Traitors in *Ireland*, were meant only a Company of petit, loose Fellows, such as in this Kingdom would be apprehended by a Constable :

The Earl's Defence as to the 15th Article.

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That every Fellow that went out a Sheep-stealing was term'd a Rebel there. And he call'd the Lord *Robert Dillon* to show, that it had been the Practice of the Deputy and Council to assess Soldiers, not only on the Party himself, but on the Septs (or whole Kindred of the Rebels.)

Mr. *Palmer* said, they admitted the Usage of laying Soldiers on the Septs of Rebels and Traitors, who esloigne themselves, and will not submit to the King's Justice; but Usage would not justify the thing; being directly contrary to a Statute of the 22d of *Eliz.* which says, That if any lie out as Traitors or Rebels, five of the Sept, who bear the Surname, shall be fin'd at the Council-Chamber, *but not have Soldiers laid on them.*

My Lord *Dillon* depos'd, That he had observ'd, that when a Person had committed some Felony, or unjustifiable Act, and withdrew himself into the Woods, a Proclamation us'd to be issued for him to come in at such a time, and render himself amenable to the Law; and if he came not in, he was accounted a Traitor or Rebel.

Sir *Arthur Tyrningham* depos'd, that it had been the constant Practice of former Deputies to assess Soldiers on such Offenders.

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John Conley depos'd, that it was an ordinary thing to levy the King's Composition-Rents, that were in Arrear, by Soldiers, who lay on the Party till they were collected.

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Henry Dillon depos'd, that he had known the *Exchequer* Rents levy'd in the same manner; and particularly upon himself, when the Lords *Cork* and *Ely* were Lords-Justices. That when he was Sheriff, twenty five Horse were quarter'd upon him for not levying the Contribution-Money: And that he had three Warrants from the Lords *Cork* and *Ely*, and, he thought, under the Hands of the rest of the Council; by Vertue of which he levy'd the Money due to some Troops, and paid it them.

Sir *Arthur Tyrningham* depos'd, that he had a Warrant from my Lord *Falkland* for attaching a Person, and laying Soldiers upon him in a Case of Debt; but whther it was at the King's Suit, or a private Person's, he did not remember. That the
Debt

Debt was not above sixteen or twenty Shillings, and they were quarter'd upon the Party, and liv'd at his Cost till it was paid; and that this Practice was very ordinary and frequent.

The Lord *Ranulagh* depos'd further, that during the Government of my Lords *Cork* and *Ely*, the King's Rents being slowly paid, they usually gave Acquittances out of the *Exchequer* to the Officers of the Army, who assess'd Soldiers on the Defaulters till the Money was paid.

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My Lord *Strafford* observ'd, that though it were now admitted, that the Contribution-Money was levy'd by Soldiers eight Years before his Government; it was made part of this Charge, that he had traiterously and wickedly *devis'd* to subdue the Subjects of that Realm, by levying *that Money* on them.

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Then he produc'd my Lord *Falkland's* Instructions, appointing him to quarter Soldiers on those who did not pay the King's Rents.

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From these Proofs my Lord *Strafford* infer'd, that the assessing Soldiers had never been interpreted to be Treason in the chief Governor of *Ireland*; for he had shewn, that it was very usual to assess Soldiers on Septs of Offenders, for levying *Exchequer* Rents, and even in Cases of Debt, and for the levying Composition and Contribution-Money: And that the State made no Difference between assessing for the King's Rents, and for Contempts and Disobedience to Justice. And if the Deputy had that Power in the former Case, his assessing Soldiers on the Contemners of Justice to bring them to be amenable to the King's Laws, could not by any Construction be made Treason in him: That both must be Treason, or neither; for one was as contrary to the Statute they had cited as the other. Then he produc'd a Proclamation, which shew'd, that he did not introduce this Custom, but found it in *Ireland*.

His Lordship desir'd, that he might answer further to that part of the Article which the Commons had wav'd, lest any thing of that should stick with their Lordships. But the Commons op-

The Earl is not permitted to answer any part of an Article not insisted on by the Commons.

T 2

posing

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posing this, and saying they had given it up Yesterday, he desisted.

Then his Lordship proceeded in his Defence, and said, that the first Article in my Lord *Falkland's* Instructions (mention'd by the Manager) for taking off Soldiers, was no Restriction to him, not being his Instructions.

As to the Misdemeanor committed by the Soldiers, under Pretence of seeing the King's Writ executed, as had been attested by *Berne* and *Kennedy*, he was not answerable, for he was not in *Ireland* then; neither did it appear that *Piggot*, who laid them, had any Warrant from him.

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That as to any Warrant granted to *Savil*, he thought it very hard to make it the Foundation of a Charge of High-Treason without producing the Original Warrant, or some Copy of it duly attested; for what the Grounds were, or with what Limitations, or Restrictions, it was granted, did not appear.

He observ'd further, that this mighty War, which he was charg'd with having levy'd against the King, and his People, was dwindled to one single Instance of certain Soldiers being laid upon one Man. That the Serjeant said his Custom was to lay but two or three Soldiers, and at most but six; and it must be by a very great Strain that could heighten this into a making War; and that it had never been complain'd of while he was in *Ireland*.

That the Serjeant at Arms was a publick Officer, and he should make it appear that what Warrant soever he had, it was not only in relation to him, but to enforce the Decrees of the King's other Courts of Justice. And for Proof of this he call'd *Nicholas Ardab*, who depos'd, that in the second Year of his present Majesty, one Mr. *Fitzgerard*, a High-Sheriff, not perfecting his Accounts, or appearing to the Pursuivant, the Court of *Exchequer* (of whom the present Lord-Chancellor was one) mov'd the Lord *Falkland* to quarter a Party of Horse upon him.

Mr. *Savil* being ask'd, if his Warrant was agreeable to former Precedents, said, he never saw another Warrant of that Nature; but his Predecessor told him, that he receiv'd a Warrant from the Lord
Falkland

Falkland to fess Soldiers on the Lands of *Thomas Fitzgerald*, who refus'd to come, and pass his Accounts.

Henry Dillon depos'd, that the Serjeant at Arms executed the last Proceſs of Contempt, both in the Courts of *Chancery* and *Exchequer*; and that Serjeant *Thimbleby* told him, where he was disobey'd, he might aſſeſs Soldiers: And that this was done as well in Caſes between Party and Party, as where the King was concern'd.

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My Lord *Strafford* ſaid, he hop'd their Lordſhips would not adjudge him a Traitor for laying two or three Soldiers on ſome refractory Perſons to bring them to Juſtice, as was the uſual Practice of that Country, eſpecially ſince it did not appear to be done with any reaſonable or corrupt Intention.

That, as his Maſteſty's Deputy, he was qualified in a more than ordinary manner to uſe the King's Troops for purſuing Rebels, and ſecuring the publick Peace, according to his Diſcretion. And he conceiv'd, if there had been no Precedent for ſuch a Warrant, it could not be charg'd on him as a Crime; for by his Commiſſion he was empowered to govern according to the Cuſtoms of that Realm. That by the tenth of *Hen. VII. c. 17.* the Power of making War and Peace was committed to the Lieutenant: And this Statute was after the 18th of *Hen. VI.* which they had cited. That every forcible Entry was as much Treason as what he was charg'd with; and yet that was an Offence uſually puniſhed in the Star-Chamber. That the King was never concluded by any Statute where he was not nam'd, and conſequently neither the Deputy, who acted in his ſtead. And though the 18th of *Hen. VI.* ſays, *No Lord, or any other, &c.* this could not affect the chief Governor, who was above the Condition of a Lord. That this Statute alſo ſays, *He ſhall not lead or bring*; and according to their own ſhowing, theſe Soldiers were led by the Serjeant at Arms, and not by him. That it ſpeaks of bringing Rebels, &c. which could never be extended to the King's Forces, who came to attach refractory Perſons. — That notwithſtanding this Statute the chief Governor has always us'd to aſſeſs

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Soldiers without the Imputation of Treason ; and Practice was ever the best Interpreter of Laws. — But that admitting it was Treason by the Statute-Law of *Ireland*, he was not tryable for it here.

He conceived it very hard, that such antiquated Statutes should be started a new, and re-kindled to destroy him, and his Posterity at a Blow, after so long and continued Practice to the contrary ; though he did not doubt but make it appear, that this Statute, so much insisted on, had been repeal'd.

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For by the Statute of 8 *Edw.* IV, c. 1. all the Statutes of *England* are enacted to be in Force in *Ireland* ; among which is the Statute of 1 *H.* IV, which says, *Nothing shall be adjudged Treason, but what is specified in the 25 Edw. III.* and consequently the Statute of *Hen.* VI. as to the Treasons therein mentioned, is repeal'd, it being made before the 8th *Edw.* IV, and contrary to the 25th of *Edw.* III, so that Treason is reduc'd to the same Standard in *Ireland* as in *England*. — Then he produc'd the Statute 11 *Eliz.* c. 7. whereby it appears the Lord-Deputy had Power to assess Soldiers ; and consequently (he infer'd) could not be guilty of Treason for doing it within the Statute of *Hen.* VI. and that there remain'd nothing more for him to clear, than that he was not within the Meaning of the 25th of *Edw.* III. which makes it Treason *to levy War against the King within his Realm.* And he appeal'd to their Lordships, if the laying of two or three Soldiers in this manner, in order to bring those that were Refractory to Justice, could, by any Construction, be call'd a levying War against the King, and his People, it being done for the Honour and Authority and Justice of the King, and not as an Enemy to him.

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The Managers
reply as to the
15th Article.

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Mr. *Palmer* reply'd in the first place, That no Usage could give a Man Authority to commit Treason against a Statute, though the Precedents my Lord *Strafford* brought did not come up to his Case, viz. the laying Soldiers on the Subject in time of Peace for not conforming to his private Orders.

That

That though his Majesty's Deputy has Power to resist Rebels, and make Peace, yet he had no Power to make War on his Majesty's Subjects in time of Peace, and under the King's Protection, for that was a making War on the Sovereign Power that did protect them; and that the bringing Soldiers from a Garrison with their Arms, and commanded by an Officer, must be a higher Offence than a forcible Entry, especially the Serjeant being limited to no certain Number.

That his saying the Statute of the 18th *Henry VI.* did not extend to him, because it did not extend to the King, was such a Reason as the Commons did not expect to hear; That this was to assume a Power above the Law, and make himself equal to Sovereignty. Nor could he excuse himself because he was not the Leader of those Soldiers, for the giving a Warrant to commit Treason was Treason.

The Commanding another to commit Treason is Treason.

As to his not being liable to be tried in *England*, for the Breach of an *Irish* Statute, it was a Mistake, for they deriv'd their Laws from the Crown of *England*; for tho' they had a Power to make Acts of Parliament, it was subordinate, and the Laws there are the Laws of *England* apply'd to that Place.

As the particular Custom of any Place in *England* is not the general Law of the Land, but is the Law of that Place by Custom, yet it may be adjudg'd out of the Precincts of that Custom. So the Laws of *Ireland* are the Laws of that Kingdom, and yet may be adjudg'd by this supreme Court out of the Limits of *Ireland*. And when a Cause is brought hither from *Ireland*, by Writ of Error, they

Whether one may be try'd by the House of Lords in *England*, for a Fact committed against the Laws of *Ireland* there.

adjudge of it here, not according to the Laws of *England*, but the Laws of *Ireland*; and they desir'd that my Lord might be adjudg'd according to the *Irish* Statute of the 18th of *Henry VI.* And he said that the 8th of *Edward IV* did not repeal the *Irish* Statutes, but only introduc'd the *English* Laws, so far as they might be consistent with their own; tho' he confess'd he was not prepar'd to argue this Point of Law at present, expecting only Matter of Fact would have been insisted on, and therefore left it to those who should be appointed to give their Lordships Satisfaction in point of Law.

Upon Writs of Error the Courts here take Cognizance of the *Irish* Laws, but not originally.

That the 11th of *Eliz.* was made in a time of Hostility, and it gave the Deputy a Power only by Implication; and however was only intended to be put in practice against Rebels, and not in time of Peace, where the Law had its full Course; and so that Statute could not justify him.

And as to his Intent, tho' he had no Intent against the King's Person, yet if it were against his People, such a levying War was Treason; for as in Felony, where the Subject is concern'd, it is laid to be against the King's Crown and Dignity, because the Subject is under the King's Protection; so laying Soldiers on the King's Subjects in a hostile manner, while they were under his Protection, was levying War against the King's Crown and Dignity; and concluded, that he thought they had fully maintain'd this Article, as to the Matter of Fact; and as for Matter of Law, if there remain'd any Doubt, they should offer a further Argument hereafter. Then a Recess was granted for a Day, at the instance of the Lord *Strafford*, and the House adjourn'd to *Saturday* the third of *April*.

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Eleventh Day.

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Art. 16.

Charges him with prohibiting the Subjects to go out of the Kingdom.

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Saturday, April 3.

This Article charges him with issuing several Proclamations, forbidding the Nobility and others to depart the Kingdom without his Licence, whereby they were depriv'd of all Opportunity of petitioning for Redress against his Tyranny and Oppression.

In maintenance of this Article, they produc'd certain Propositions made by the Lord-Deputy to his Majesty, and approv'd at the Council-Board *February 17, 1631.* And that which they now insisted on was as follows, viz. *That no particular Complaint of Injustice or Oppression be admitted here against any, unless it appear'd the Party first made his Address to the Deputy.*

Next a Proclamation by the Deputy and Council, dated the 17th of *September, 11 Car.* was produc'd, *Requiring all Noblemen, Undertakers and others, who held Estates and Offices in that Kingdom, to reside there, and not depart without the Licence of the Lord Deputy.*

Then they proceeded to show, that several who had apply'd to the Lord-Deputy for Licences were denied them.

Richard

Richard Wade was sworn.

He depos'd, That in *August* 1638. my Lord *Esmond* sent him with a Petition to the Lord-Deputy, for Licence to go over and defend a Cause wherein the Lord-Deputy was Plaintiff, but he could not obtain Leave. That in *Michaelmas* Term, 1638, my Lord *Esmond* procur'd the King's Letter, which the Deponent deliver'd to the Lord-Deputy, but could get no Licence then; and that my Lord *Esmond* was detain'd till *April* following, when Publication was pass'd in the Cause.

Locky also depos'd, That my Lord *Esmond* understanding that the Lord-Deputy had made him a Defendant, amongst others, to a Bill he had prefer'd in the Star-Chamber, petition'd to come over, but was detain'd till Publication was past, as the last Witness depos'd.

Richard Wade further depos'd, That when he acquainted my Lord-Deputy that my Lord *Esmond*'s Design in going over was to get a Commission to justify his Innocence, the Lord-Deputy answer'd, *Then he would not give way, for he should have no Commission but what was out already.*

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My Lord *Roche* also depos'd, That the Lord-Deputy refus'd him a Licence, when he was coming over to defend himself against an Information in the Star-Chamber, which he apprehended was occasion'd by the Lord-Deputy.

James Nash was sworn.

He depos'd, That my Lord-Deputy having made a Decree against one *Mac-Carty* for 5496 l. his Grandson petition'd for Leave to come over, pretending it to be for his Education, but indeed, in order to be reliev'd; and that the Lord-Deputy deny'd him. And the Petition itself, and the Lord-Deputy's Answer to it were produc'd and read.

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Henry Parry was sworn.

He depos'd, That the 21st of *April*, 1638. my Lord Chancellor *Ely*, his Master, was committed to the Castle of *Dublin*, and immediately the Deponent was sent for to the Council-Board, and an Oath given him, by the Lord *Strafford*'s Direction; and

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and he was examin'd where the Great-Seal was; to which he answer'd he knew not, unless it was with my Lord *Ely*. That he was then order'd to attend the Judges, to be examin'd concerning some Papers of the Deponent's that were seiz'd and brought to the Council-Board; and that accordingly he attended them every Day the Week following. And that then my Lord *Ely* dispatch'd him to *England*, with Instructions to his Lordship's Friends to solicit his Majesty for his Enlargement. That having been about two Months in *England*, he was arrested by one *Welsh*, by virtue of Mr. Secretary *Cook's* Warrant; and after three Weeks, Mr. *Ralton* told him it was Mr. Secretary *Cook's* Pleasure he should give Bond to return to *Ireland*, which he did, and came to *Ireland* accordingly, and presented himself to the Lord-Deputy, and told him he was come to attend him, according to the Tenor of his Bond; and his Lordship told him he would do well to attend next Sitting at the Council-Board. When he appear'd there, the Lord-Deputy ask'd where was his Petition, and he said he presented his Person; but that at another Day he presented a Petition, as he found was expected, and on reading of it the Constable of the Castle was call'd, and the Deponent censur'd and committed, and fin'd 500 *l.* and continu'd a Prisoner in the Castle till he was utterly ruin'd — Says he was never put to answer in Writing, nor was there any Petition against him; nor was he further examin'd from that Day to this; and said further, that before he could see his Order, he was forc'd to pay Sir *Paul Davis* 45 *l.* That his Fine was afterwards reduc'd to 250 *l.* of which he had paid 184 *l.*

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Mr. *Fitz-gerard* was sworn.

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He depos'd, That in *November* last, the Commons of *Ireland* drew up a Petition, or Remonstrance, of their Grievances, and the whole House presented it to the Lord-Deputy *Wainsford*; and apprehending they should be dissolv'd, they made an Order that a Committee should be appointed to repair to *England* with their Grievances. That the 12th of *November* the Parliament was prorogued without Redress; and the next Day the said Committee was

sum-

summon'd to attend the Council-Board; and there it was demanded of them, whether they would repair to *England* without Licence from the Lord-Deputy and the Board? They answer'd, That in Obedience to the House of Commons, they did intend to repair to *England*. Then they were ask'd, if they would go if they were commanded not to go? To which they answer'd no. Then they were order'd to withdraw; and being call'd in again, the Lord-Deputy *Wainsford* bid them take notice that there was a Proclamation restraining all the Subjects of *Ireland* from repairing to *England*; and charg'd them on their Allegiance not to depart till his Majesty's Pleasure was known, which he would labour to know speedily.

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Next the Remonstrance to the Lord-Deputy was read, setting forth the ill Consequences of the Proclamation, which restrain'd the Subjects of that Kingdom from going to *England* and having Access to his Majesty, in order to obtain Remedy for their just Grievances, as their Ancestors had done.

Mr. *Palmer*, in his Observations on the Evidence, said, That by the Propositions made before my Lord *Strafford* went over, it appear'd that he intended no Complaints of Oppression should be made, without applying first to the Deputy: And in Execution of this Authority, they had seen that all who made Complaints against my Lord, or his Orders, were refus'd Licence to come over, and those who ventur'd to come without, were fin'd and imprison'd. That the whole Parliament were refus'd Licence; and tho' this was done by another Deputy, yet he made the Proclamation, and other Acts of my Lord *Strafford*, the Colour of his Denial, and the Subjects were thereby excluded from all Access to his Majesty, or Possibility of Redress of their Grievances.

My Lord *Strafford* answer'd, That before his going to *Ireland*, or during his Residence there, he never had any other Intentions, than to behave himself justly and faithfully in the Service of his Majesty and that Kingdom. And tho' he was charg'd with the Subversion of their fundamental Laws, the Law never had so free a Passage as in his

Earl's Defence
as to the 16th
Article.

his Government ; nor had they given one Instance of his having staid any legal Proceeding there ; for the Causes they mention'd came Originally before him, and not from any other Court.

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As to the Charge, that he procur'd those Instructions to prevent all Complaints of Injustice and Oppression, till Address were made to himself [the Deputy] he thought it but reasonable the Deputy should be appriz'd of the Complaint before it was brought over, he being, in some measure, answerable for the Injustice committed there. That it must be very discouraging to the Ministry, and very inconvenient to the Subject, to be drawn over hither upon every petit Complaint, for which they might have Redress at their own Doors ; and that it appear'd from the Instructions themselves, these were the Motives that occasion'd them, and not any Design in him to assume any greater Authority than became him. And as to the Proclamation complain'd of, prohibiting People to come over without Licence ; he conceiv'd it to be agreeable to, and warranted by the Statute Law there ; for by 26 Henry VI. c. 2. It is enacted *That none of the King's liege Men (which comprehended all) or Officers of the Land, go out of the Land, but by Commission from the King, his Deputy, &c. on pain of their Possessions and Offices being seiz'd.* And in 25 Henry VI. c. 9. there is a Clause *That the Possessions, &c. of those who went abroad by the Command of the King and Government should not be seiz'd in their Absence.* From whence his Lordship infer'd, that if they went without Licence they were punishable for it.

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Then he produc'd a Petition to his Majesty from Ireland, dated May 1628, setting forth, “ That in
“ respect of the Non-residence of many great Men,
“ who spent their Estates abroad, the Kingdom
“ was impoverish'd ; they therefore pray that Or-
“ der might be taken, that both they, and all
“ Undertakers who had Estates bestow'd on them
“ for the improving and support of the Kingdom,
“ might make their personal Residence there half
“ a Year at the least, and not depart without
“ Licence.

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And

And next he show'd his Majesty's Order pursuant to the said Petition; as also the Instructions to my Lord Falkland to the same effect.

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Then his Majesty's Letter was read, authorizing the Proclamation complain'd of, *That none should depart the Kingdom without Licence, &c.*

And his Lordship observ'd that he had not been very hasty in issuing this Proclamation, for the King's Letter bore date *June 20, 1634.* and the Proclamation issued *September 17, 1635;* and further, That he was restrain'd by his Commission from putting out this, or any other Proclamation, alone. That it was done by the whole Council, and the Chief-Justices were present, to whom they refer'd themselves in Matter of Law; and if any thing was illegal they ought to answer for it; tho' he could not suppose Men of their Learning should so often consent to these Things without good Authority. And this he offer'd in excuse of this and all other Proclamations, not doubting but it was according to the Laws and Customs of the Realm.

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—Then he show'd that for Reasons of State these Restraints were necessary: First, For that *O Neal* and *Tir Connel*, Men who had a great Influence in *Ireland*, had Regiments compos'd of the most antient *Irish* Septs in the *Spanish* Service; and if Men might withdraw themselves, and go over thither at their Pleasure, it would be of dangerous Consequence to the State. Nor would it be much to the Advantage of the King and Commonwealth, if the prime Nobility and Gentry, who were Catholics, might go over to *Doway* and *St. Omers*, and other Jesuits Colleges for their Education; and that this Restraint was no more than was practis'd in *England*: That by the Law of Nature, as *Pater Familæ*, the King might take Account of his Household; That he was the great Father of the Commonwealth, and this Respect (of asking his Licence) was due to him; and without this Expedient, the Chief Governor could not take just Measures for the Prosperity of the Kingdom.

That he observ'd several Things alledg'd against him which were no part of the Charge, which he hop'd they would not conclude him guilty of, till they gave

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gave him an Opportunity of making his Defence, which he could not possibly do at present, not being before appriz'd of them---That the Thing which seem'd foulest, of which he had a very faint Remembrance, was that of my Lord *Esmond*: He said he did admit that my Lord *Esmond* petition'd to come over, and was detain'd by him awhile, he being Serjeant-Major-General, and the Army then in Motion; and he was mistaken if he did not shortly after give him a Licence, but it drawing towards Winter my Lord *Esmond* did not think fit to make use of it till the Spring. And whereas the Witness said my Lord *Esmond*, by this Denial, was depriv'd of an Opportunity of having a Commission to examine Witnesses; he desir'd to call Mr. *Riley* as a Witness for him.

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Mr. *Riley* depos'd, That he was employ'd as Clerk in the Cause; and that Mr. Attorney was Plaintiff, by Relation of my Lord Lieutenant, against my Lord *Esmond* and Sir *Pierce Crosby*; and when that Cause came to Commission, the Defendants brought Commissioners Names and joined in it; but he could not say who sued out the Commission.

Mr. *Ralton* depos'd, That Commissions were sued out in the said Cause; and he was very confident my Lord *Esmond* had the Benefit of examining Witnesses.

My Lord *Strafford* also added, That, as he remembered, one Occasion of staying my Lord *Esmond*, was a Complaint of some Practices against Sir *Walsingham Coke's* Life; and that after the Examination he was set at liberty.

That as to my Lord *Roche*, he was unwilling to press what he was charg'd with in the Star-Chamber, when he was denied Licence; and he thought it was not expected he should answer that Matter fully now, it being no Part of his Charge; but he did not doubt to justify himself, and shew he had reason to stay him, when he was requir'd.

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As for *Mac-Carty*, it appear'd the Cause of his going was for Education; and if he should have suffer'd such as he to go to *Doway* or *St. Omers*, he thought he should have been more blam'd than he
was

was for restraining him. That if he had shewn his Design of going over to complain against the Decree, he should not have hinder'd him; but the Decree was made in pursuance of a Letter from his Majesty, on a notable Fraud of *Mac-Carty*, the Father, in the Case of Sir *James Craig*; and the Witnesses against him being Solicitor in the Cause, he thought his Evidence deserv'd no great Credit.

As to the Business of *Parry*, here was only his single Testimony; and if the Judge was to be condemn'd on the Evidence of the Party punish'd, he thought no Man would be a Judge if he could avoid it. That, however, the Sentence was by the whole Council, and he desir'd to produce it, whereby it appear'd, that he was censur'd for his Contempt of the Board, and not for departing without Licence.

Then my Lord *Dillon* was desir'd to testify his Knowledge of these Matters, and first concerning my Lord *Esmond*.

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Robert Lord Dillon depos'd, That the Judges writing up from *Wexford* Assizes, that they had taken some Examinations, and it was mistrusted that my Lord *Esmond* had set some on to cut off Sir *Walsingham Coke*: The Council resolv'd my Lord *Esmond* should be staid for a time, till the Judges determin'd whether it was Treason or not; and that this was in the Summer Circuit. — Then my Lord *Dillon* being ask'd what he remembred of the Sentence against *Parry*, the Managers oppos'd his being examin'd, for that it was asking the Judge whether the Sentence was just. My Lord *Strafford* reply'd, That the Judge might as well be examin'd to that Point as the Delinquent; however, his Testimony, as to that, was wav'd.

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Sir *Adam Loftus* depos'd, That the Council had notice from the Judges in their Circuit, of some Practices against Sir *Walsingham Coke*, by certain Rebels and Outlaws, that lay in Ambush near his House; and a Rebel in the Castle charg'd the Lord *Esmond* with being concern'd in it; but the Testimony of the other Witnesses not concurring with his, my Lord *Esmond* was dismiss'd, after an Examination that held three Weeks or a Month.

Francis

Page 480.

Francis Wetheringe, a Servant of my Lord *Strafford's*, depos'd, That my Lord *Esmond* apply'd for a Licence the latter End of the Summer; and my Lord *Strafford* said he should have it, but Winter coming on he let it alone till the Spring.

Mr. *Ralton* depos'd, That this Practice against Sir *Walsingham Coke* was advertis'd to *England*, and he took it to be in *September 1638*.

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As to the great Fees that were extorted for Licences, as had been urg'd against him, he call'd Mr. *Slingsby*, who depos'd, That he gave the Clerk Directions not to demand any Fees for Licences; and that the Clerk never accounted to him for above five Pounds for any Licence, which he said was voluntarily given, and not demanded.

Mr. *Little* depos'd, That he charg'd his Servant to demand no Fees but of Privy Counsellors and Officers of the Army; that the Fee for a Captain's Licence was twenty Shillings; and for others the ordinary Fee five Shillings, and many times none was paid.

My Lord *Strafford* added, That he must observe in closing this Article, as in the rest, that here was no Treason in it; and for Matter of Misdemeanor, he did not doubt but their Lordships would give him time to examine Witnesses, and for his Council to be heard; and then he should acquit himself as became him.

The Managers
Reply as to the
16th Article.

Page 482.

Mr. *Palmer* reply'd, That tho' his Lordship had made great Professions of his Endeavours to preserve the Laws of *Ireland*, and aver'd that legal Proceedings were never less interrupted, it had been prov'd he had taken Causes from the ordinary Jurisdiction, and had them brought before him by Paper Petition, and submitted, if this were not an Interruption to the legal Proceedings — As to the Particulars they had instanc'd, in being no Part of the Charge, his Lordship having said in his Answer he never deny'd Licences, gave them occasion to prove his Denial by these Instances, that being the Point in issue.

That notwithstanding the fair Pretences on which he had procur'd his Instructions, his Practice show'd for what Ends he obtain'd them, viz. to debar them

them of all Access to his Majesty with Complaints of his Injustice and Oppression: And when the Judges and Ministers could not be complain'd of, but to my Lord himself, this must draw a great Dependence upon him, and make them amenable to his Will.

For the Authorities by which he would justify the Proclamation, viz. 25 Henry VI. All he could infer from that Statute, was, That those who went without Licence might have their Lands seiz'd; but not that their Persons should be restrain'd. That as to the Statute requiring those who had great Possessions to be resident in troublesome Times, that their Lands might be maintain'd against Incurfions: This was only a Provision for the Safeguard of those Lands the King had been at great Expence in conquering; and it was not intended thereby, that the Subject should be prohibited resorting to his Majesty for Redress of their Grievances and Oppressions; which was the Charge against my Lord *Strafford*.

Page 483.

That the Instructions in 1628 were to the same Effect with the Statute, and neither of them restrain'd the Subjects from having Access to his Majesty when they had Cause of Complaint. And as to the Subject being under such a Restraint in *England*, his Lordship was mistaken; for the 5th of *Richard II*, which prohibited going abroad without Licence, was repeal'd by a Statute made the 4th of *Jac. c. 1*. And by the Common Law it was no Offence to depart without Licence. That indeed his Majesty might restrain Persons by a *Ne Exeat Regnum*, &c. or by a Proclamation on special Causes, but till then the Passage was open.

Any one may go out of *England* without the King's Licence.

That my Lord had also recited the King's Letter in the Proclamation, and us'd great Skill in his Defence, but his Grounds were false; for what was applicable to a Residence for Defence, he made a Reason for restraining all kind of Resort; and that his procuring the rest of the Council to concur with him, in a Thing so contrary to Law, did not extenuate his Offence, tho' it was a Fault in them.

That tho' it might be fit to restrain Persons from going to *Doway* or to *Tyrconnel*, this was no Reason to restrain them from coming to *England* to complain of their Oppressions — That the Business of *Sir Walsingham Coke* could be no reason for denying my Lord *Esmond*, that being but three Weeks in agitation; and he suppos'd that Accident did not happen till after the preferring his Petition: And tho' my Lord did afterwards give a Licence, it was not till the Examination of Witnesses was over; and whether the Commission, mention'd to be taken out, was by *Sir Pierce Crosby* or my Lord *Esmond*, the Witness could not tell.

That the Suit against the Lord *Roche* in the Star-Chamber was ended half a Year before he desir'd a Licence, and so was no Reason for denying it.

That *Mac-Carty* did not petition to go to *Doway* for Education, but to *England*; and my Lord *Straford* could not but know what relation he had to the Suit that had been determin'd by him, and that was the Reason of denying him.

That as to *Parry*, indeed, the Sentence recites it was for another Cause, but that was the Iniquity of it, to express a Cause that was not true. And Lastly, As to his Lordship observing there was no Treason in it, they give the same Answer they had done before, That the Multiplication of Acts all tending to an arbitrary Power made the Treason: And that this was not so petty a Matter as his Lordship would make it; for by this Means he obtain'd to himself Sovereign Power, and in the great Case of the Marquess of *Dublin*, tho' he had the Dominion of *Ireland* granted him under the Broad-Seal, and his Patent pass'd in Parliament, yet it was one of the Articles charg'd on him, for it tended to the Severance of the Allegiance of the People from their King.

The Managers here produc'd some Witnesses to show that 24 and 25 Shillings had been demanded by the Secretaries for Licences, to disprove what had been said, that little or nothing was demanded.

This Article charges him with framing a new and unlawful Oath, and imposing it upon the Scotch who inhabited Ireland; and that such as refus'd it be fin'd, imprison'd and banish'd; and particularly, that he fin'd Henry Stewart and his Wife 5000 l. a piece, &c. Which Oath the Lord Strafford declar'd did oblige them not only in point of Allegiance and Supremacy, but to the Ceremonies and Government of the Church establish'd, or to be establish'd by his Majesty's Authority.

Art. 19.

Page 489.

Charges him with imposing a new Oath on the Scots in Ireland.

Page 490.

Mr. Whitlock open'd this Article, and shew'd with what Rigour the Oath was impos'd.

Then Sir James Montgomery was sworn.

Page 491.

He depos'd, That my Lord Strafford, in April 1639, sent Letters to most of the Scotch Nobility and Gentry in Ireland (whereof the Deponent receiv'd one) importing that they should repair to Dublin the 27th of that Month, to confer about some Matters that concern'd his Majesty's special Service. When they came up, my Lord told them he sent for them in Friendship to give them his Advice. He said there were great Disorders in Scotland, and there was a Jealousy that some of them might be Favourers of those Distempers, and it behov'd them to do something to wipe off that Asper-sion, and that they should do it freely, and not stay till it was impos'd by Authority; in short, that as those in Scotland had enter'd into a Covenant, so it was expected they should take an Oath expressing their Detestation of it, or to that effect — That thereupon the Bishops of *Raffo* and *Down* answer'd, That as those in Scotland had conspir'd together and taken an unlawful Oath, they would join in a lawful Oath in Opposition to it, and would petition for it to his Lordship; that this was seconded by more of the Clergy, but little was said by others; And the Lord-Deputy pitch'd upon the Bishop of *Raffo* to draw up the Petition. That the Deponent thereupon took upon him to tell the Lord-Deputy that these Things were not charg'd upon the *Scotish* Nation, but upon the Covenanters in Scotland, and that it did not concern them; and he thought it might not be amiss to think what they should do before they appointed one to draw a Petition; and that the Lord-Deputy reply'd in some Heat, Sir

Evidence of the Scotch Gentry being sent for to Dublin to take the Oath.

Page 492.

James, you may go home and petition, or not petition, but he that does not shall do worse. That finding the Deputy was resolv'd to have it so, there was no more said then ; but when the Bishop of *Raffo* had prepar'd the Petition, they met to have sign'd it, and some excepted that the Words had too great a Latitude, and desir'd it might be inserted, *they should be in the same Case with other his Majesty's Subjects ;* and that at length it was put in, *That they should be in equal manner and measure with other his Majesty's Subjects ;* and then the Petition was engross'd and sign'd and deliver'd to his Lordship. That a Deputation of them (among whom was the Lord *Montgomery* and the Deponent) being appointed by my Lord-Deputy to wait on him and consider of the Oath ; they desir'd some Explication of those Words *That they should not protest against any of his Majesty's Royal Commands ;* and would have had it *Just Commands according to Law.* But the Lord-Deputy said it needed no Explication on that Account, for they were not to expect any other Commands from his Majesty. And my Lord himself administred the Oath to them. — That soon after they were dismiss'd. And that in *May* Commissions were sent into the Country to administer the Oath to all of that Nation above sixteen Years of Age, both Men and Women, and to certify the Names of those that refus'd. — That Pursuivants were sent to apprehend those who refus'd to take it ; and many fled into *Scotland*, and others up and down the Country, and left their Goods in their Houses, and their Corn growing on their Lands. — Then the Oath was read, and is as follows.

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Page 494.

The Oath.

“ I N. do faithfully swear, profess and promise,
 “ that I will honour and obey my Sovereign Lord
 “ King *Charles*, and will bear Faith, and true Alle-
 “ giance to him, and will defend and maintain his
 “ Regal Power and Authority ; And that I will
 “ not bear Arms, or do any rebellious or hostile
 “ Act against him, or protest against any his Royal
 “ Commands, but submit myself in all due Obe-
 “ dience hereunto : And that I will not enter into
 “ any Covenant, Oath, or Bond of mutual Defence
 “ or

“ or Assistance against all sorts of Persons whatso-
 “ ever; or into any Oath, Covenant or mutual De-
 “ fence or Assistance against any Person whatso-
 “ ever, by Force, without his Majesty's Sovereign
 “ and Regal Authority: And I do renounce all
 “ Covenants contrary to what I have sworn and
 “ promis'd. *So help me God in Christ Jesus.*

Mr. *Maxwell* depos'd much to the same effect as to their being sent for to take the Oath, but does not mention any Objection that the *Scotch* Gentlemen made to the taking it.

Sir *John Clotworthy* was sworn.

He depos'd, That Multitudes of the *Scotch* left their Lands and Houses when the Commission came down for taking the Oath.

Page 495.

Richard Salmon a Schoolmaster sworn.

He depos'd, That at the Sentence of Mr. *Stuart*, his Wife and Daughter, *Octob.* 10. 1639, Mr. *Stuart* saying, he was willing to take the first part of the Oath; but in that the Oath seem'd to bind them, not only in point of Allegiance and Supremacy, but likewise in point of Ecclesiastical Duties, therefore he durst not take it; my Lord *Strafford* told Mr. *Stuart* he had made a right Judgment; the Oath was design'd to bind them to be obedient to the Ecclesiastical Ceremonies of the Church, either establish'd, or that should be establish'd by his Majesty: And that whoever would be obedient to the Ecclesiastical Orders of the Church, he would lay his Hand under their Feet to do them good, but whoever would resist, he would prosecute them to the Blood.

Page 496.

Page 497.

He depos'd further, that my Lord *Strafford* said at that time, That these People almost made him mad, and caus'd him to forget himself: That they were Traitors and Rebels, and if his Majesty would send him back to that Government, he would eradicate Root and Branch, even all of that Nation, out of the Kingdom of Ireland, saving such Lords, and others, as had taken the Oath.

Evidence that the Earl said he would eradicate the *Scotch* Nation, if they refused the Oath.

That 5000 *l.* a piece was laid on Mr. *Stuart*, and his Wife, and 3000 *l.* on each of his Daughters, and 3000 *l.* on Mr. *James Gray*; and that Mr. *Gray* he believ'd was not worth a hundred Pound.

Stuart, &c. fin'd for not taking the Oath.

John Loftus was sworn.

Page 418.

He depos'd, That Mr. *Stuart*, &c. were proceed-
ed against in the Star-Chamber, *Ore tenus* : That
after the rest of the Court had given their Opinions,
my Lord-Deputy said, he consented to the Fines,
viz. 5000 *l.* a piece on *Stuart* and his Wife, 2000 *l.*
a piece on his Daughters, and 2000 *l.* on *Gray* ;
and said, he wanted Terms to set forth the
Heinousness of this Cause. That he was to leave
his Sword ; but if it pleas'd his Majesty to return
him thither again, he hop'd to have such, as would
not conform themselves to the Discipline of the
Church, rooted up Stock and Branch.

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The Earl's An-
swer as to the
Charge in the
19th Article.

My Lord *Strafford* answered, that their Lordships
might observe in what a dangerous Posture the
King's Affairs were when the Proclamation issued
for taking this Oath in *May* 1639 : That the States
of *Ireland* were apprehensive the *Scots* there, who
were not fewer than 100,000, might join with the
Covenanters, and therefore enter'd into Consideration
how to secure that Kingdom against them : And
that one had been executed for being in a Plot
to deliver the Castle of *Knock-fergus* to a great Man
in *Scotland*.

These Particulars he call'd several Witnesses to
prove ; and shew'd, there was a Debate at the
Council-Board how to secure the Government.

Robert Lord Dillon was call'd.

He depos'd, That about the time mention'd,
there was Intelligence from the North of some
Meetings and Contrivances among the *Scots* there,
and the State were very apprehensive of a Plot on
that side. And that after some Debates it was
concluded at the Board, That if an Oath was ad-
ministr'd to those of that Nation, it might be a
great Security, and prevent their treating with the
Covenanters : And that it was resolv'd to consult
the principal Gentry of that Nation about it. And
that my Lord-Deputy should write Letters to them.

Page 500.

Sir *Philip Manwaring* also depos'd, that these Mat-
ters were debated about that time in Council.

Sir *Adam Loftus* also depos'd, That it was debated
at the Council-Table, that some Oath or Bond
might be made to divert those of the *Scotch* Na-
tion

tion from joining the Covenanters: And that it was resolv'd the principal Nobility and Gentry of Scotland, that were in Ireland, should be sent for and dealt withal, to expresse their Loyalty, and offer some means that might be a Security to the King, and themselves: And that he was very confident that the Privy-Council were privy to the Letters my Lord Strafford sent: And that he did not observe there was any Reluctancy in the Scotch Gentlemen towards taking the Oath when it was tender'd.

My Lord Strafford added, that the Oath was taken with much Chearfulness, and none made any Scruple of it but Sir James Montgomery. That finding them willing to petition he went to them, and show'd his Readiness to serve them in it; that it was brought him by my Lord Montgomery, and some others to look over, and he found these Words in it; viz. *An Offering of their Lives and Fortunes for vindicating the Authority of Regal Power*; which he thought, being too general an Expression, might be turn'd to their Disadvantage, and therefore inserted the following Words to qualify them, viz. *In equal Manner and Measure with other his Majesty's Subjects.*

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Then the Petition, and the Act of State thereupon was read.

In this Petition, the Petitioners express'd their Detestation of their Countrymen's Proceedings, and especially in entring into the Covenant; and desire his Lordship to administer an Oath to them, or take some other Method, whereby they might have an Opportunity of vindicating themselves, and acknowledging his Majesty's Regal Power, &c. And in Consideration of the said Petition, the Act of State directs the aforesaid Oath to be tender'd to all those of the Scotch Nation in Ireland.

The Substance of the Petition sign'd by the Scotch Gentry.

Page 502.

To prove the Design of seizing Knock-fergus Castle, Mr. Slingsby was call'd, who depos'd, That about the time the King was in the Fields of Berwick, it was discover'd, that one Trueman an Englishman wrote a Letter for the betraying of that Castle; and the Party, who discover'd the Letter, was to have been one of them, and twenty more were to have sign'd it (as he attested). That Trueman sent

this

this Letter voluntarily, without being solicited from *Scotland*; and being sent for to *Dublin* to be examin'd, he afterwards had his Tryal in the Country, and was hang'd, drawn and quarter'd.

The like Oath
fram'd for the
Scots in Eng-
land.

Page 503.

The Lord *Strafford* observ'd in his Defence, that there was the like Oath and Proceedings in *England*, as in *Ireland* about that time; and the *English* Oath was read, being of the same import with that administered in *Ireland*: And he submitted it to their Lordships Wisdom, what Offence this could be in a Deputy of *Ireland*, in such an Exigency, fairly without Constraint or Violence, to tender such an Oath, and thereby secure the Subjects Allegiance, and the publick Peace of the Kingdom. That it could not enter into his Understanding, how this could be construed to be High-Treason, especially the same Course being taken here in *England*. And besides all this, he had a Letter from his Majesty, enjoining him to proceed in this manner, which Letter was produc'd and read; in which Letter his Majesty authorizes him to try the Fidelity of those of the *Scottish* Nation in *Ireland*, by administering an Oath to them to the effect aforesaid. But his Lordship said he had manag'd the Matter so, that he never discover'd this Letter before, but he apprehended it to be a full Justification for him: And he did not know that none might administer an Oath but by Authority in Parliament; and if he had offended ignorantly, it being in Obedience to his Majesty, he hop'd he should not be thought to deserve Punishment for it: However, if it were to do again (being inform'd as he then was) he must obey, and had rather suffer in obeying his Majesty, than dispute his Commands of that kind; the thing not being against Law, as he apprehended, and intended only for preserving the Peace of the Kingdom.

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As to the Sentence against Mr. *Stuart's* Family, and Mr. *Gray*, it was the very Day before he came from *Ireland*: That the whole Court of Star-Chamber agreed to it, and he had but a single Voice: That the Fines were set before he came to vote, and he did but concur with the rest: That the Fines were but suitable to the Offence, tho' little
was

was paid or requir'd of them, and they might have had a Pardon the next Day, if they would have taken the Oath. That he who refuses the Oath of Allegiance incurs a *Præmunire*; so that the Fines could not be look'd upon as immoderate, and that the Oath had no manner of relation to Ecclesiastical Affairs, though one of the Witnesses had sworn it.

Page 505.

As to the Words, *That the Scotch Nation were Rebels, and he would extirpate them, &c.* he was well assured he never spoke them, or thought them, but had always a great Respect for that Kingdom, being his Majesty's Native Country; and that it was such an Expression as was fit only for a Man that was out of his Wits: That he never receiv'd a personal Wrong from any of that Nation, but many Civilities; and therefore ow'd them no Animosity, but all the Respect in the World: And he would offer a Witness or two who would clear him, he thought, of any such Expression, that he never spoke even of the *Faction* in Scotland but in milder Terms.

And as to Richard Salmon, who swore he spoke these Words the 10th of October 1639; He (the Lord Strafford) was then in England; so that this Witness is not to be credited entirely. And Mr. Little and Mr. Ralton being call'd, they both depos'd, that my Lord Strafford came to London the 21st of September 1639. — As to the Testimony of John Loftus, that did not come up to what Salmon had sworn; for he only depos'd, that the Expression was, *His Lordship hop'd to have such of the Scotch Nation, as would not submit to the Ecclesiastical Government, rooted out Stock and Branch from that Kingdom:* And this was far from rooting out the Scotch Nation, for there were but few that did not submit to the English Church-Government. And to clear up this Matter, his Lordship desir'd Sir Philip Manwaring might be call'd.

Page 506.

Sir Philip depos'd, That he sat in Court the Day Sentence pass'd on Stuart, &c. and heard every Word that fell from my Lord upon that Occasion: That my Lord-Deputy, addressing himself to Mr. Stuart, said, he was sorry, since he bore that Name, that he should be the only Man that carry'd him-
self

Page 507.

self with that Disobedience; and added, *That the Scottish Nation* (with Respect he spoke it) he knew there were among them gallant and worthy Persons, and had great Experience of their Loyalty and Faith to their Sovereign. But there was a *Faction* among them, which he should endeavour, as near as he could, to bring to that Obedience, at least to keep them who were within that Kingdom, to that Obedience, Loyalty and Duty, that Subjects ought to bear. — That my Lord *Strafford* said further, That he did not understand the Laws of *Scotland*, and therefore would say nothing to them: But as to what concerned the Kingdom of *Ireland*, and keeping the King's Subjects in Obedience there, he would do his best to preserve that. And that he heard not the Words, *Root and Branch*, or *Stock and Branch*.

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Sir *Adam Loftus* depos'd likewise, that he was at the Censure of *Stuart, &c.* but heard not the Words my Lord *Strafford* was charg'd with; and believ'd the Council were unanimous in the Censure.

Sir *Philip Manwaring* depos'd, That waiting on the Lord *Strafford* at Dinner after the abovesaid Censure, as did the Judges and many others that Day, he heard Mr. *Wainsford*, the Master of the Rolls, express his Satisfaction to the Lord-Deputy, in that he had us'd so much Caution in his Speech upon that Occasion, and had avoided all such Words as might cast any Reflection on the *Scottish Nation* in general, and only reflected on the Faction in that Kingdom.

Here my Lord *Strafford* concluded his Defence to this Article, and said, he hop'd his Intentions to serve his Majesty in this Instance would procure an easier Judgment from their Lordships than that of High-Treason.

The Managers
Reply, as to
the 19th Ar-
ticle.

Page 509.

New Oaths can-
not be impos'd
but by Parlia-
ment.

Mr. *Whitlock* reply'd, that my Lord *Strafford* flighting, or rather justifying his Offence, and saying that he would commit it again if he had the same Command; though he had been told in that great Presence, that it was contrary to Law; this was a great Aggravation of his Offence. That a new Oath could not be impos'd but by Parliament; and that if the Oath of Allegiance only had been tender'd,

tender'd, he would have sufficiently perform'd the King's Command, and secur'd them against what they fear'd : But nothing would serve my Lord *Strafford* but he must frame new Oaths, and assert his Authority to be equal to an Act of Parliament. — That altho' no Man believ'd his Majesty would command any thing contrary to Law, yet it had been sufficiently prov'd, that my Lord *Strafford*, a subordinate Minister under the King, had publish'd his own Commands in the King's Name, which were not justifiable by Law ; which was Cause enough for the *Scots* to be cautious in swearing *they would submit to all the King's Royal Commands.*

That my L. *Strafford* proving that the Matter was previously debated in Council, and Letters sent for the *Scots*, disproved that part of his Answer which says the *Scots* came up, and desired to have an Oath tender'd to them. That my Lord *Strafford* misinforming his Majesty, and thereby procuring that Letter to authorize him to administer the Oath, was but an Aggravation of the Offence : And besides, my Lord *Strafford* had gone further than he was empower'd to do by his Majesty's Letter, in setting Fines on the Refusers. — And as my Lord *Strafford* says, he must be mad to say the Words he is charg'd with of the *Scotch* Nation, it appear'd by the Proofs, that he acknowledg'd himself to be very much transported at that Censure.

Page 510.

Here Sir *John Clotworthy* was ask'd if he could give any particular Instances of Persons that fled from their Habitations, and he mention'd about six : And said further, that *Trueman*, who was try'd for offering to betray *Knock-fergus*, was a silly Fellow, and wheedled into the writing the Letter above mention'd, for which he was hang'd.

Page 511.

Mr. *Whitlock* proceeded, and said the *English* Oath would be no Precedent for that in *Ireland*, because it was fram'd after it ; nor did they ever hear any Person was compel'd to take it. That though *Salmon* was mistaken in his Evidence, as to the Circumstances of time, he might speak right in the main ; and it was agreed by all that the Censure was

Page 512.

was the Day before my Lord *Strafford's* Coming to *England*, whenever that was.

That though Sir *Philip Manwaring* said in his Evidence, that his Lordship mention'd only *Stuart*, who express'd his Dislike of the Oath, they had shewn, that many were brought up to *Dublin*, and imprison'd on refusing it, and others had fled the Kingdom on that Account.

That his Lordship had threaten'd formerly he would make an Act of State equal to an Act of Parliament, and now he was as good as his Word; for no Authority could impose an Oath without the Concurrence of the three Estates.

Page 513.
The Earl complains that his Effects were seiz'd in *Ireland*, and moves for some Redress.

After the Managers had reply'd, his Lordship show'd, that all that he had was seiz'd on, and he had no Money to subsist himself but what he borrow'd; and how his Wife and Family in *Ireland* found Bread he could not tell: He therefore mov'd, that their Lordships would take his Case into Consideration, that the rest of the Peerage might not suffer in this Usage of him. That he thought it strange, being a Peer, he should be in a worse Condition than the meanest of the People would have been in such a Case; and that under a Pretence of a Charge of High-Treason, which (it seem'd) to be admitted, could not be made out but by strain'd Constructions.

Page 514.

Being ask'd if his Goods were seiz'd by the Order of the Commons, which was read the other Day, he answer'd, Yes. Sir *John Clotworthy* reply'd, my Lord had still a fair Estate in *Ireland* they had not meddled with.— But my Lord *Strafford* aver'd he had but 1000 *l.* a Year there, and he had two hundred and sixty in Family, and how they could be maintain'd out of that he knew not. Upon this Representation their Lordships directed him to petition them.

The Commons having thus far proceeded regularly Article by Article, said, they should take the Liberty for the future to handle them together, as they related to one another, and not singly in the Order they lay; which my Lord *Strafford* vigorously oppos'd, but was over-ruled by the Lords, who said

saïd the Commons were at Liberty to proceed on them promiscuously.

Monday, April 5. 1641.

The Commons proceeded to speak to the 20th, 21st, 22d, 23d, and 24th Articles.

Twelfth Day.
Page 515.

This Article charges him with inciting his Majesty to carry on an offensive War against his Subjects of *Scotland*, and having caus'd divers Ships of that Nation to be seiz'd in order to kindle the saïd War, &c.

Article 20.
Inciting a War
against the *Scots*.

Page 516.

In this Article they charge him, That having prevail'd with his Majesty to enter into the saïd War, on Pretence of procuring a Supply for Maintenance of it, he compel'd his Majesty to call a Parliament in *England*, designing, that if the saïd Parliament refus'd to enter into his Measures, then to procure his Majesty to break with them, and raise Money on the Subject by Force.

Article 21.
Advising a
Breach with
the Parliament,
and to raise Mo-
ney by Force.

Page 517.

They set forth in this Article, that he procur'd the Parliament of *Ireland* to declare they would assist in the saïd War against the *Scots*. And gave Directions for raising an Army there of 8000 Foot, and 1000 Horse, being for the most part Papists, whom he design'd to employ in the Destruction of this Kingdom of *England*.

Article 22.
Drawing the
Irish into the
War against the
Scots, and de-
signing to bring
over the *Irish*
Army, and
reduce the
Kingdom of
England.

Page 518.

He is charg'd in this, that upon the fifth Day of *May*, he falsly told his Majesty, that his Parliament refus'd to supply him, and thereby procur'd his Majesty to dissolve them; and immediately after saïd to his Majesty, *That having try'd the Affections of his People, he was loose and absolv'd from all Rules of Government; and that he was to do every thing that Power would admit.*

Article 23.
Telling his Ma-
jesty he was ab-
solv'd from all
Rules of Go-
vernment, &c.

Page 519.

That he declar'd the Parliament had forsaken the King, and given him Advantage to supply himself another way; and that he was not to suffer himself to be master'd by the Frowardness of the People, &c.

Article 24.
And that he
might supply
himself as he
thought fit, &c.

Page 520.

Mr. *Whitlock* in opening these five Articles show'd, that they were now about to prove my L. *Strafford's* Design of subverting the Government both of *England* and *Scotland*, and of bringing in an Army upon them to force them to submit to an Arbitrary Power.—

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Page 523.

They began first with *Scotland*.

And

And the Earl of Traquair was sworn.

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Page 525.

Page 526.

An Examination cannot be read against a Prisoner, where the Witness can be produc'd.

Page 527.

He depos'd, That upon a Debate of the Demands of the Scotch Parliament before his Majesty, my Lord *Strafford* said, That the unreasonable Demands of Subjects in Parliament was a Ground for the King to put himself into a Posture of War, or to that Effect; but he could not be positive as to the very Words, and refer'd himself to his former Examination before the Committee: Which the Managers pray'd might be read; but my Lord *Strafford* oppos'd it, for that the Examination of a Witness was never known to be read, where the Witness himself could be produc'd *viva voce*.

Being ask'd who spoke first when this Expression was us'd, he answer'd, He could not tell: But upon Debate of the Business at the Table, every Man declar'd his Opinion, and he thought they all agreed in this, viz. That whereas his Majesty, and the Council, had condescended that the Scots Parliament should send some of their own Members to present their Demands; if they should not give good Reasons and Satisfaction for their Demands at their coming up, they [the whole Council] would be assistant to his Majesty to put him in a Posture to reduce them to their due Obedience.

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My Lord *Digby* observ'd, That the Charges in these Articles being for Words, if the Witness were not tied up to Words, they were not tied to the Question; and since it was so long since they were spoken, he thought their former Examinations ought to be allow'd in Evidence.

Page 529.

Mr. *Glyn* aver'd, That where a Witness varied in his Testimony, from what he said at his Examination, the Judges always allow'd the Examination to be produc'd and read; and said they must insist upon it that these Examinations be read.

My Lord *Strafford* on the contrary asserted, That when the Witness was produc'd *viva voce*, such Examinations were never read.

Page 530.

Then the Managers produc'd the Examination of the Earl of *Morton*, who was ill and could not appear; and my Lord *Strafford* opposing the reading of it, because he had no Opportunity of cross-examining him, my Lord High-Steward determin'd upon

upon the whole, That where the Witnesses could be produc'd, they should give their Evidence *viva voce*, but where they could not, their Examinations should be read.

Then the Earl of *Morton's* Examination was read, importing, That he, the said Earl, was present at a Debate before his Majesty, touching the Ground of the War against the *Scots*, the Night before the great Meeting of the *English* Peers at *York*; and that the Earl of *Strafford* then said, That the unreasonable and exorbitant Demands made by the *Scots* in their Parliament, was a sufficient Ground to make War upon them; and that the King need not seek for any other Grounds for it; or Words to that Effect: And that the Examinant representing, that since his Majesty had given the *Scots* Leave to present their Reasons, his Majesty would not think their Demands a Ground for making War till he had heard their Reasons; that the Earl of *Strafford* reply'd again, There was Ground enough for that War. This Examinant saith further, That on the Earl of *Traquair's* first relating the *Scotch* Demands to his Majesty at *Whitehall*, the Earl of *Strafford* said, Those Demands were not Matters of Religion, but such as did strike at the Root of Government, and such as he thought were fit for his Majesty to punish by Force; or Words to that Effect.

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Sir *Henry Vane* was sworn.

He depos'd, That soon after the breaking up of the last Parliament (the fifth of *May*) the Council were commanded to deliver their Opinions what was fit to be done; and that the Deponent gave his Opinion for a defensive War, and my Lord *Strafford* for an offensive War.

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The Earl of *Northumberland's* Examination also was read, importing, that the Lord *Strafford*, after the last Parliament, advis'd his Majesty to go vigorously on in an offensive War against the *Scots*, and not a defensive War.

Page 533.

The Lord Bishop of *London* was sworn.

He depos'd, That upon the Earl of *Traquair's* making a Relation to his Majesty in Council, of what pass'd in the Parliament of *Scotland*, and of some Demands they made, his Majesty signified that some of those Demands were prejudicial to
that

that Crown, and he could not with Honour or Safety consent to them: My Lord *Strafford*, as well as other Lords, advis'd, that if the *Scotch* Commissioners should insist on those Demands when they come up, and would not recede or alter them, or otherwise submit; that then his Majesty should prepare himself to reduce them by Force. —

Page 534.

That after the last Parliament, the whole Council declaring for a War, he thought my Lord *Strafford* gave his Opinion for an offensive War, and carrying the War into *Scotland*: And though there was some Difference in Opinion, as to the Method of carrying on the War, they all agreed in the main.

Mr. *Nicholas Barnwell* was sworn.

He depos'd, that Sir *Robert Loftus* seiz'd some *Scotch* Ships in *Ireland*; and the Deponent heard him say he had a Warrant for it; but he could not swear the Warrant was from my Lord *Strafford*.

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Mr. *Whitlock* infer'd from the foregoing Proofs, That they had made out my Lord *Strafford's* Design of subverting the Government of *Scotland*; and then said he would proceed to shew he had the same Design upon *England*: And in order to it the Examination of the Lord-Primate of *Ireland* was read.

The Evidence produc'd to prove the Earl's Design of subverting the Government of *England*.

This Examinant declared, that discoursing with the Earl of *Strafford* in *Ireland*, concerning some Levies of Money made upon the Subjects, my Lord *Strafford* said, He agreed with those in *England*, who thought that in case of imminent Necessity, the King might make use of his Prerogative to levy what he needed. But added, that in his Opinion his Majesty was first to try his Parliament, and if they supply'd him not, then he might use his Prerogative; or Words to that Effect.

The Witnesses permitted to look upon their Examinations.

Page 536.

My Lord *Conway* was call'd, and desiring his Examination might be shewn him, it was rul'd that he should see it. After which he depos'd, that discoursing with my Lord *Strafford* how the Forces they were raising were to be paid, my Lord *Strafford* said, he made no doubt but the Parliament would supply the King, and give him twelve Subsidies; and the Deponent answering, what if they should

Should not? My Lord Strafford reply'd, *The Cause was very just and lawful; and if the Parliament would not supply the King, then he was justified before God and Man, if he sought means to help himself, though it were against their Wills, or to that effect.*

Sir Henry Vane depos'd, That about the fifth of December he heard my Lord Strafford say, *That if the Parliament should not succeed, he would be ready to assist his Majesty any other way, or Words to that effect.*

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Then the Managers said, they would proceed to prove what had been said by the Creatures and Friends of my Lord Strafford.

Sir Robert King was sworn.

He depos'd, That discoursing with Sir George Ratcliffe how the King would do for Money to maintain the Scotch War, Sir George said, *The King could not want Money, for he had an Army of 30000 Men, and 400,000 l. in his Purse, and a Sword by his Side; and if he would want Money, who could pity him? or Words to that Purpose.*

The Speeches of my Lord Strafford's Friends produc'd as Evidence against him.

My Lord Ranulagh also depos'd, That Sir George Ratcliffe said the same Words at a Council of War in Ireland, after my Lord Strafford came away: And the Deponent added, that he objecting the Difficulty of raising Money while the Scotch Army was on Foot; Sir George answered, *We can make Peace with the Scots when we list, but that is the worst of Evils.*

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Sir Thomas Barrington was sworn.

He depos'd, That discoursing of the Carriage of the last Parliament with Sir George Wentworth, Sir George said, *This Commonwealth is sick of Peace, and will not be well till it be conquer'd again.*

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Page 541.

The Earl of Bristol was sworn.

He depos'd, That discoursing with the Lord Strafford of the Distractions of the Times, after the Breaking up of the last Parliament, and the Deponent proposing the Summoning a New Parliament as the best Means to compose Matters; my Lord Strafford did not dislike the Proposal, but said it was not adviseable at that time; for that the present Dangers of the Kingdom were so pressing, they could not admit of so slow and uncertain a Remedy as a Parliament was. That the Parliament had, in the great Distress of the King and Kingdom, re-

Page 542.

fus'd

fus'd a Supply in the ordinary way of Subsidies ; and therefore the King must provide for the Safety of his Kingdom by such ways as he shall think fit in his Wisdom ; and that the Lord *Strafford* then repeated that Maxim, viz. *Salus Reipublicæ Suprema Lex* : And that my Lord *Strafford* also us'd Words to this Effect, viz. *That the King was not to suffer himself to be master'd by the Disaffection and Stubbornness of some particular Men ; and he conceiv'd he meant some Members of Parliament, for they were talking of the Parliament.*

Edward Lord Newburgh was sworn.

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He depos'd, That after the Rising of the last Parliament, he thought he heard my Lord *Strafford* say at the Council-Table, That seeing the Parliament had not supply'd the King, his Majesty might take other Courses for Defence of the Kingdom.

The Earl of *Holland* was sworn.

He depos'd, That after the Dissolution of the last Parliament, my Lord *Strafford* said in Council, *That the Parliament, in denying to supply the King, had given him Advantage to supply himself by other ways, or Words to that Effect.*

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The Examination of the Earl of *Northumberland* to the seventh Interrogatory was read, importing, That at the Committee of Council for Scotch Affairs, in the Presence of his Majesty, the Earl of *Strafford* said, *That in case of Necessity, and for the Defence and Safety of the Kingdom, if the People refuse to supply the King, the King is absolv'd from Rules of Government ; and that every thing is to be done for the Preservation of the King and his People ; and that his Majesty was acquitted before God and Man.*

To the third and fourth Interrogatory the Examinant answered, That the Forces, which were to come out of *Ireland*, were to land in the West of *Scotland*, as my Lord *Strafford* declar'd in the King's Presence ; but he never heard that those Forces, or any other, were to be employ'd in this Kingdom, to compel or awe the Subjects of this Realm to yield to such Taxes or Charges as should be impos'd on them by his Majesty ; but he believes, from some Discourses of my Lord *Strafford's* to the King, that it was intended to raise Moneys by extraordinary Ways.

Sir

Sir Henry Vane depos'd, That when the Business of an offensive or defensive War was controverted before his Majesty in the Committee for Scotch Affairs, my Lord Strafford said, *Your Majesty having try'd all Ways, and being refus'd, and in case of this extreme Necessity, and for the Safety of the Kingdom, you are acquitted before God and Men: You have an Army in Ireland, you may employ it to reduce this Kingdom; or Words to that effect. But this Deponent could not say, that by the Words you may, the Reduction of the Kingdom was intended: And whether the Kingdom of England or Scotland were meant, he would not pretend to interpret.*

The Managers insisted, That no other Kingdom could be intended but *England*, the Words being spoken here, and he having just before spoken of the King's trying his Subjects here, and their having refus'd him; and concluded, that they thought the Charge in these Articles fully prov'd. My Lord Strafford, in his Defence of this part of the Charge, begun with that part of the 20th Article, which says, *he labour'd to persuade and incite an offensive War against the Scots.*

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To this his Lordship answer'd, That by their own Proof it appear'd, That he gave his Opinion but as the rest of the Council did, viz. That if the Commissioners of *Scotland* gave not Satisfaction, that then the King might put himself into a Posture of War. And, if it were necessary, he could show that he gave no Vote at all, but only deliver'd the Sense of the Board. And as to what the Earl of *Morton* testified that he spoke afterwards at *York*, viz. *That the unreasonable Demands of Subjects in Parliament was a ground for the King to put himself in a Posture of War;* He observ'd, That when this had been resolv'd in the Council of *England* before, it could be no great Crime for him to say so — As to his saying, *It was not Matter of Religion that was the Business, but they struck at the Root of Government, and were to be punish'd by Force;* He believ'd every Man would say, if they struck at the Root of Government, they ought to be reduc'd by Force. And tho' he gave this Answer, the two last Expressions were not made any part of his Charge. And as to his

My Lord Strafford's Answer, as to the Charge in the 20th, 21st, 22d, 23d, and 24th Articles.

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his delivering his Opinion for an offensive War, as others did, after a War had been advis'd by all, he did not see how it could be construed High-Treason in him, any more than in the rest, to deliver his Opinion according to his Conscience.

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As to the seizing the Scotch Ships, Sir Robert Loftus did it by Authority from the Admiral, and not from him [*as Mr. Slingsby depos'd*] and, upon the whole, he hop'd their Lordships would not be of Opinion that he had promoted Differences between his Majesty and his Subjects, as he was charg'd by the 20th Article.

Answer to the
21st Article.

As to the 21st Article, which they would support by my Lord Primate's Testimony, who deposes he said, *That the King might use his Prerogative as he pleas'd*; He answer'd, That this was in private Discourse, and by way of Argument; neither did he apprehend it any Crime to say the King might use that Prerogative the Law gave him; and it were a high Offence to think the King would use it otherwise than justly and fairly, and for the Subjects Advantage — That from my Lord Conway's Testimony it appear'd he said, he did not doubt but that the Parliament would supply his Majesty; so that he was far from thinking of that Misfortune, of the Breach of the Parliament at that time. And as to that Expression, *That if the King should be deny'd in just and lawful Things, he might justify before God and Men the seeking Means to help himself, tho' it were against their Will*; he must still say it was very natural for a Man to himself, and it would not be unnatural in the King, who was accountable not only for himself, but for his People.

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As to what Mr. Treasurer depos'd he said, *viz. That if the Parliament should not succeed, he would be ready to assist his Majesty any other way*, he is verily perswaded Mr. Treasurer said as much himself; neither did he think either of them to blame for it, for by *Ways* must be intended *lawful Ways*, it not being to be suppos'd his Majesty would command other. And that in those Debates, where he said he would serve his Majesty any other Ways, he always concluded there was no sure Expedient to settle a right Under-

Understanding between the King and his People, and to make both happy, but Parliaments.

As to the next Particular, wherein he is charg'd with procuring the Parliament of *Ireland* to declare their Assistance in the War against the *Scots*, he desir'd only the Remonstrances of both Houses might be read, to show with what Chearfulness they granted the four Subsidies for carrying on that War. And he said, tho' it had been prov'd he had procur'd those Declarations of both Houses, it could be no Crime after he had receiv'd his Majesty's Commands in that Matter.

Page 552.
Answer to the
22d Article.

As for his confederating with Sir George Ratcliff, and conspiring to employ the *Irish* Army for the Ruin and Destruction of the Kingdom of *England*; he had as little Inclination to enslave himself and his Posterity, as another; and the Proof they had brought of this was very odd, for they produc'd Sir Robert King to prove a Saying of Sir George Ratcliff's that had no manner of Relation to what his Lordship had said or done; and he desir'd the Earl of *Northumberland's* Examination might be read again, where he says that Army was design'd for *Scotland*; and that their Lordships would observe that the Earl was one of the Committee for *Scotch* Affairs, and so might be the better able to give an Account of that Matter.

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The Marquess of *Hamilton* also was call'd, and depos'd, That his Majesty acquainted him with the Resolution of raising 8000 Foot in *Ireland*; and that they should land about *Ayre* in *Scotland*, but never heard any Design of bringing them to *England*, or that they were to come hither at all.

Sir Thomas Lucas, Serjeant-Major-General, depos'd, That my Lord Strafford acquainted him with the Design of landing the *Irish* Army in *Scotland*, and joining them there by some *English* Troops; and that my Lord took a Map and show'd him the Place where he design'd to land them, &c.

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Mr. Slingsby depos'd, That the Care of providing Ammunition and Provision for the *Irish* Army was committed to him; and my Lord Strafford directed him to procure an exact Account of the *Scotch* Coast near *Ayre*, and provide a Number of flat-bottom Boats,

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Boats, for the landing that Army thereabouts, and he provided himself with them accordingly.

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Sir William Pennyman depos'd, That upon the Report of the *Irish* Army being design'd for *England*, he enquir'd of my Lord *Strafford* about it, and my Lord *Strafford* solemnly protested they never were design'd to come upon *English* Ground.

My Lord *Strafford* said, he acknowledg'd he gave out the Army was to come to *Workington* and join the King's Forces at *Berwick*, that the *Scots* might not apprehend his true Design; but that he acquainted the Lord *Ormond* the Lieutenant-General of that Army, &c. that they were design'd for *Scotland*, and all the Stores of Ammunition, &c. were sent to the Borders of that Country, which demonstrates his real Intentions.

The next Thing he is charg'd with, is what proceeded out of the Mouth of his Brother, viz. *England would never be well till it was conquer'd again*. Here he observ'd that they had sifted his nearest Friends and Relations; That his House, his Table, and every Place had been search'd and narrowly enquir'd after, in order to convict him; but in answer to this Charge, he said, he was not accountable for his Brother's Speeches, tho' he did not doubt, if they wou'd permit his Brother to be examin'd, he wou'd clear himself in this particular.

A Witness may not be examin'd where his Evidence tends to clear himself of a Crime.

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Answer as to the 23d Article.

Sir George Wentworth offering to speak, the Managers oppos'd it, because his Testimony tended to his own Justification, and the Lords rul'd that he should not be examin'd.

As to the Testimony of the Earl of *Bristol*, his Lordship remembers very well there was some such Discourse between them as he had testify'd; and he was still of opinion, that in the case of extreme and unavoidable Necessity, as on an Invasion by a foreign Enemy, when there is not time to call a Parliament, the King, as the common Parent of the Country, may use what Power God has given him for preserving himself and his People; but that this was very different from ordinary Cases, to which they would have the Words refer; and if the whole Discourse was taken together, it carried quite another

other Face than it did when it was taken in pieces, as it had been to patch up this Charge.

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And as to what my Lord Newburgh testified he said, viz. That since the Parliament had not supplied the King, he might take other Courses for the Defence of the Kingdom; He did acknowledge the Words, but he did not apprehend any thing amiss in them, it being to be presum'd he meant just and lawful Courses, and such as were fit for a pious King to use. And as to my Lord Holland's Testimony, viz. That the Parliament having deny'd the King, had given him an Advantage to supply himself other ways; he gave much the same Answer, That if by Ways they would understand lawful Ways, there would not be found any Thing like Treason in them.

As to my Lord Northumberland's Testimony, which charges him with asserting The King might do every thing for the Preservation of his People; This was spoken of Cases of extreme Necessity, and grounded on that Maxim, *Salus populi suprema Lex*; for when ordinary Courses might be taken, he held it was not right to use others; but when ordinary Means fail, and the Occasion gives no time, God forbid but the King should use the utmost of his Power, Wisdom and Courage for the Preservation of himself and his People.

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Besides that the Words he is here charg'd with, were spoken by way of Argument in common Discourse between Man and Man, without proceeding to any Action upon them; and he hop'd he should never live to see such Words charg'd upon a Man as High-Treason in this Kingdom, for then no Man could be safe.

And as it was only Words he was charg'd with, he should show that Words of a much higher Nature were punish'd but with loss of Goods and Imprisonment, and for this he cited 1 Edward VI. c. 12. which inflicts this Punishment on those who impugn the King's Title by express Words or Preaching, &c. And he observ'd further, that the same Statute says, That if a Man shall compass the Death of the King, and be not thereof attainted by open Deed, it is not Treason. That the Statute Henry IV. and 1 Mar. agreed with this, and shew'd the Intent of

Page 562.
Whether Words only shall be adjudg'd Treason.

of the Law-makers to be, to remove the Dangers the Subject might be liable to, if bare Words should be construed Treason; that it was the Wisdom of their noble Ancestors to specify what should be accounted Treasons, and reduce them to a Certainty; and if way were once given to constructive and arbitrary Treasons again, there might, in a short time, be more Indictments of Treason than Actions of Trespas brought into *Westminster-Hall*.

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As to his saying *his Majesty had an Army in Ireland which he might employ to reduce this Kingdom*, he desir'd my Lord Treasurer might be examin'd again, if ever he heard his Lordship, in any private Debate, tell the King so; whereupon the Lord Treasurer answer'd, he never heard him speak any thing like it. And being ask'd by the Managers if he never heard my Lord *Strafford* tell the King, *He was loose and absolv'd from all Rules of Government*; He answer'd, he did not remember any thing of that at present.

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My Lord *Cottington* being interrogated to the same Questions, answer'd, he never heard the Lord *Strafford* use either of those Expressions. ----- Being ask'd whether he perswaded the King to supply himself by extraordinary Ways; he answer'd, he did not remember those Words *extraordinary Ways*; but he heard him say the King ought to seek out all due and legal Ways, and to employ his Power, and Authority, and Prerogative, *Caste & Candide*; he remembers these Words very well.

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My Lord *Strafford* observ'd, That here was only Mr. Treasurer [*Sir H. Vane*] who attested these Words, *That his Majesty had an Army in Ireland which he might employ to reduce this Kingdom*; and that it was very possible he was mistaken, here being all the rest of the Committee for *Scotch Affairs* examin'd (except his Grace of *Canterbury*) and they remember nothing like them; and he protested most solemnly he never spoke them; and *Sir H. Vane's* Testimony being single could not convict him of Treason, by the Statute of 1 *Edward VI. c. 12.* That it was not Treason to tell the King *that having try'd the Affections of his People he was absolv'd from all*

all Rules of Government (i. e. ordinary Rules) and was to do every thing that Power would admit (i. e. lawfully admit) and that his Majesty having try'd all just and honourable Ways, and been refus'd, should be acquitted both by God and Men. That these Words being spoken with Restrictions and Reservations aforesaid, ought not to be turn'd to his Prejudice; but if Words were to be taken to pieces, and the Antecedents and Consequents left out, they might make Treason of the most innocent Expressions.

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And to set their Lordships right in this Matter, he desir'd the Earl of Northumberland's Examination might be read (and it was read accordingly) and was to this effect, That my Lord Strafford declar'd that his Majesty might use his Power when the Kingdom was in danger, or on unavoidable Necessity. That the Lord Strafford did often say, That that Power was to be us'd Caste & Candide, and an Account thereof should be given to the Parliament, that they might see it was only employ'd to that use; And that he us'd to say frequently, That this Kingdom could not be happy but by a good Agreement in Parliament between the King and his People. The Lord Goring and Mr. German depos'd to the same effect, as did the Lord Cottington; and said further, that the Lord Strafford added, That the Necessity being pass'd, and the Work done, the King ought to repair it, and not to leave any Precedent to the prejudice of his People.

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My Lord Strafford observ'd further, That nothing having been done by the King or Council, upon the Words he is charg'd with, but what was just and honourable, plainly demonstrates that nothing else was intended by them. ----- He added, that these Words were not spoken wantonly or unnecessarily, but in full Council, where he was, by the Duty of his Oath, oblig'd to speak according to his Conscience; and if he had forbore to speak what he apprehended to be for the Advantage of the King and his People (as he conceiv'd this to be) he had been perjur'd, and now for speaking them he is charg'd as a Traitor: In these Circumstances he thank'd God he was not afraid of them that could kill the Body; and if he must offend God or Man, he should soon determine his Choice; and what-

ever

The Earl attributes this Prosecution to a popular Rage.

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The Hardship of being prosecuted for Words spoken in Council.

Page 572.

The 24th Article not insisted on.

The Managers Reply, as to the five preceding Articles.

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Advising the Destruction of the Prince:

Such Words always held to be treasonable.

Page 579.

ever should befall him from a popular Rage or his own Weakness, he must leave it to God Almighty and to their Lordships Honour and Justice. -----

That he was charg'd only with delivering an Opinion; and tho' Opinion might make a Heretick, he never before heard that it would make a Traitor; and if it were once admitted that a Counsellor, delivering his Opinion under an Oath of Secresy and Faithfulness at Council-Table, should, upon mistaking and not knowing the Law, be brought into question, and himself and his Posterity attainted and ruin'd, no Person of any Quality or Fortune would venture to be a Counsellor on such unsafe Terms; and he besought their Lordships to look upon him so, that his Misfortune might not bring an Inconveniency upon themselves; that if their Lordships would take the Words into their Consideration, they would observe nothing but what was honest, just, and faithful to King and People, tho' possibly they were not so discreet and well weigh'd as they ought to be; and he hop'd their Lordships would not be of Opinion there was any thing in them bordering upon Treason.

To the 24th Article he said he should make no Answer, nothing having been spoken to it.

Mr. *Whitlock* reply'd, As to what my Lord *Strafford* had said, *That if the Demands of the Scots struck at the Root of Government, they ought to be reduc'd by Force*; It appear'd that those Demands did not strike at the Root of Government, for they had been since enacted by the Parliament of *Scotland*, and confirm'd by his Majesty; and his misrepresenting them, as striking at the Root of Government when they did not, was what he was charg'd with. ----- Then Mr. *Whitlock* sum'd up the Proofs again, with my Lord *Strafford*'s Answers to them. And as to the Statute of 1 *Edward VI. c. 12.* cited by my Lord *Strafford*, where *to compass by Preaching or Sayings to depose the King, is not for the first Offence Treason*; from whence the Earl had infer'd, that the Words charg'd on him were not Treason; Mr. *Whitlock* answer'd, by Words here, was meant something less than the advising and counselling the Destruction of the King, for that was always held

to be High-Treason, notwithstanding that Statute, and so said Mr. Maynard.

After the Managers had concluded their Observations, my Lord Strafford desir'd he might have a Day's respite, to restore himself, being much fatigued with continuing his Defence this Day from eight in the Morning to five in the Evening.

Whereupon their Lordships adjourn'd to Wednesday the seventh of April.

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April 7. 1641.

He is charg'd in this Article with advising his Majesty vigorously to levy Ship-Money; and procuring some Sheriffs to be prosecuted in the Star-Chamber for not levying it: And that when the Lord-Mayor and Aldermen were sent for to the Council, and it was demanded of them what Inhabitants of the City were capable to lend the King Money, and they refus'd to answer: He said, That they deserv'd to be put to Fine and Ransom; and that no good would be done with them till an Example was made of them, and that they were laid by the Heels, and some of the Aldermen hang'd up.

Thirteenth Day

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Art. 25.

Charges him with advising the levying of Ship-Money.

And threatening the Lord-Mayor and Aldermen.

Mr. Maynard opened this Article, after which

My Lord-Treasurer was sworn.

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He depos'd, That my Lord Strafford advis'd, that they should go on vigorously and effectually in getting in the Ship-Money, after the Breach of the last Parliament.

Mr. Wiseman was sworn.

He depos'd, That my Lord-Mayor and Aldermen being call'd before the Council for not levying the Ship-Money, my Lord Strafford said, They would never do their Duties well till they were put to Fine and Ransom; and that he said further, You will have no good of this Man (meaning my Lord-Mayor, as he suppos'd) till he is laid by the Heels.

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The Earl of Barkshire was sworn.

He depos'd, That his Majesty being desirous to borrow Money upon good Security at eight per Cent. the Aldermen were sent for, and commanded to give the King the Names of such as were able to lend within their several Wards; which they excusing themselves from doing, my Lord Strafford said, Gentlemen, in my Opinion, you may be liable

to

to Fine and Ransom for refusing the King's Command on this Occasion, and not certifying the Names.

Sir Henry Garaway the Lord-Mayor was sworn.

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He depos'd, That having set forth the Difficulties of levying Ship-Money before his Majesty and Council, it was ill taken ; and my Lord *Strafford* said to the King, *Sir, You will never do good on this Man till you have made him an Example ; he is too diffident : Unless you commit him, you will do no good upon him, or to that Purpose.* — That being summon'd with the Aldermen before his Majesty, and the Council, about the Loan ; and being desir'd to rate those that were able to lend in their several Wards, they refus'd ; whereupon my Lord *Strafford* burst out in these Words ; *Sir, You will never do good of these Citizens of London till you have made Examples of some of the Aldermen.* — *Unless you hang up some of them, you will do no good upon them.* That this was after the Dissolution of the last Parliament.

Page 586.
Earl's Answer
as to the 25th
Article.

To this Evidence my Lord *Strafford* answer'd, That as to his advising the levying Ship-Money, it was no more than had been practis'd three or four Years before he came into the Kingdom ; and besides, there was a Judgment given in the *Exchequer* Chamber as to the Legality of it ; which was sufficient to determine him in that Point. And as to his saying the Aldermen were liable to a Fine and Ransom for not submitting to the King's Demands ; he confess'd he did say, That in a Case of that great Necessity, and imminent Danger, which he conceiv'd the Kingdom to be in, their Refusal might make them liable to Fine and Ransom ; and that he spoke these Words to quicken my Lord-Mayor in that Service, and not with any Design he should be prosecuted ; and at most it was but a hasty Word, and came far short of Treason. But as to the other Words, *viz. There will be no good done with the Citizens till you have hang'd some of them up :* These he absolutely denies ; and there was but *Garaway's* single Testimony, which was not of greater Credit than his own Denial, till this Misfortune happen'd : And it was strange that his Majesty, nor any of the Council remember'd it, especially

Page 587.

especially it being said to be address'd to his Majesty himself.

Mr. Maynard reply'd, That he hop'd their Lordships would not pass by these as hasty Words, when they appear'd to be conformable to his Actions and Councils for many Years preceding, and not yet laid down by him, as they discern'd. That as to the Objection, so often urg'd, of a single Testimony, several Circumstances were prov'd indeed by several Witnesses, but they all concur'd to make good the general Charge.

Page 588.

The Managers reply as to the 25th Article.

That though my Lord would excuse himself by that Judgment given in the *Exchequer* Chamber, against Law, he very well knew there was no Law for hanging Men for not certifying in a Matter of Loan.

This Articles charges, That having reduc'd his Majesty to great Straits for Money, he fell upon two dangerous Projects, viz. to seize the Money in the Mint, and to embase the Coin with a Mixture of Brass; And that accordingly he procur'd 180000 l. to be seiz'd in the Mint, which belong'd to several Merchants: And that when some attended my Lord Strafford, representing the ill Consequences of these Things, he reply'd, the City had dealt undutifully with his Majesty, and they were more ready to help the Rebels than the King, and might thank themselves for it, &c.

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Article 26.

Charges him with advising the seizing the Money in the Mint, and embasing the Coin.

Mr. Maynard having open'd this Article,

Mr. Robert Edwards was sworn.

Page 590.

He depos'd, That waiting upon my Lord Strafford, with others, to desire him he would be a Means to his Majesty, that the Money taken out of the Mint might be restor'd again; because the Merchants Adventurers Estates beyond Sea were in great Danger of being stay'd there for the Money that was seiz'd in the Tower; my Lord answer'd, if they did speed amiss they might thank themselves, for they were more ready to hold with Rebels, than to give his Majesty the 14000 l. that was due to him for Ship Money; and that they dealt very unthankfully and undutifully with the King: Adding, that though this seem'd a strange Business here, it was usual beyond Sea for People to have their Goods taken from them on a Command.—

Page 591.

That

That my Lord *Strafford* was sick in his Chamber when they waited on him, and said, he had never heard of the Matter till that Morning.

Anthony Palmer was sworn.

He depos'd, That waiting on my Lord *Strafford*, with some other Officers of the Mint, to represent the ill Effects the embasing the Coin might have, his Lordship was dissuaded by them from proceeding in it; but he read part of a Letter from *France* to them, importing, that the *French* King had appointed certain Officers to inspect Peoples Books of Accounts and Estates there, that the King might know what to demand of them: And those who refus'd to pay the Sum demanded were made by Force to pay it; and he thought he mention'd it as an Example for *England*.

Page 592.

Henry Cogan was sworn.

He depos'd, That one of the Officers of the Mint waiting upon my Lord *Strafford*, as the last Witness testified, he read a Letter from *France* to them, to the Effect Mr. *Palmer* depos'd: And then turning to my Lord *Cottingham*, he said, My Lord, this is worthy your Consideration, or to that Purpose.

Page 593.

Sir William Parkhurst was sworn.

He depos'd, That my Lord *Strafford* read such a Letter to the Officers of the Mint, as News lately receiv'd from *France*; but did not hear him tell my Lord *Cottingham* it was worthy his Consideration.

Sir Ralph Freeman was sworn.

He depos'd, That there being a Debate about paying Copper-Money, at a private Council held before his Majesty; and the Deponent saying they would not work if they were paid in Copper-Money; my Lord *Strafford* replied, You know what Course to take with them; you may send them to the House of Correction.

Then Mr. *Maynard* desir'd *Tho. Skinner's* Examination might be read, who was in Court that Morning, but absent at that time, which my Lord *Strafford* oppos'd: But upon the Managers admitting that my Lord should have an Opportunity of cross-examining him, the Examination was allow'd to be read, which was to this Effect.

The Examination of a Witness read, who was just gone out of Court.

That

That the Examinant, with Mr. *Edwards*, and some others, waiting upon my Lord *Strafford* about the stopping the Money in the Mint, his Lordship said he did not know of it till that Morning; but if any Inconvenience happened, they might thank themselves: And added, that though this might seem strange in England, it was no News in other Countries, where Princes made use of such Means to serve their Occasions; and said, that the City had dealt unworthily with his Majesty in refusing to pay the 14000 l. Ship-Money, which was his due; and that they were more ready to hold with Rebels than with his Majesty.

Page 594.

To this Evidence his Lordship answer'd, That as to the principal Part of the Charge, viz. his counselling and approving those two dangerous Projects, the seizing the Bullion, and debasing the Coin, they had offer'd no Proof at all: Nay, Mr. *Edwards*, their own Witness, says, when they came to him about the seizing the Money in the Mint, he profess'd he knew nothing of it. And Mr. *Palmer* depos'd, that when they gave their Reasons against debasing the Coin, he gave it over: And indeed, he confess'd he was one of the Committee to take Information of the Reasons for and against it, and to report; and further than that he meddled not in it. As to what he said of the City: He still thought they dealt undutifully with his Majesty, who residing amongst them, and having received so many other Favours of him, they should refuse him the Loan of 100,000 l. upon good Security. And if he said so much out of Zeal to his Majesty's Service, he did not think it any great Crime; and seeing Words were so often charg'd on him, he thought it rather an Argument of his Innocence, and shew'd they had nothing worse to charge him with.

The Earl's Answer, as to the 26th Article.

Page 595.

As to his making that Practice in France, of levying Money by Force, an Example for England, he never said, or thought any thing like it. And Mr. *Palmer*, who testified he spoke to that Effect, did not pretend to remember the Words; and he appeal'd to their Lordships, if he ought to be condemn'd for Words, where the Witness could not testify what the Words were; and that too upon the

Where one is prosecuted for Words, the very Words ought to be attested.

Page 596.

the Testimony of a single Witness, who only believ'd the Words he us'd to be of that import. — His Lordship acknowledg'd he did read part of a Letter, importing, that the Cardinal had ordered certain Merchants Books at *Paris* to be inspected, in order to demand a Supply ; and that his Lordship said thereupon, God be thank'd, they had a pious King that thought of no such Methods : And he said no more.

Page 597.

My Lord *Cottington* being call'd to testify what he knew of this Matter, he depos'd, that he was not present when the Letter was read ; and that seeing it affirm'd in a printed Book that he was there, he talk'd with Sir *William Parkhurst*, and Mr. *Palmer*, and they told him they thought *Cogan* had said so, when there was no such Matter. And the Deponent asking further, why it was said such Words were spoken to him by my Lord *Strafford* ? they said, they had been examin'd upon it, and had deny'd it.

My Lord *Strafford* added, that as to his saying the poor Men, who work'd in the Mint, might be sent to the House of Correction, if they refus'd to work, he conceiv'd he might say it without Offence ; and besides it was no part of his Charge : And concluded, that he observ'd nothing in this Article, any more than in any of the former, that had any Tendency to Treason.

The Managers
Reply as to the
26th Article.

Mr. *Maynard* reply'd, that my Lord *Strafford's* retorting upon the City in that manner, when they only desir'd their Money might be discharg'd, was a very grievous thing, and not to be slighted ; and observ'd that his Lordship had answer'd nothing to those Words, *That the City was more ready to help the Rebels than his Majesty*. And as to the other Speeches being prov'd each but by one Witness, it was true, that one Witness swore to one part, and another to another, but their Testimony was not inconsistent.

Page 598.

Mr. *Stroud* reply'd, as to that being an Argument of his Lordship's Innocency, *That Words only were laid to his Charge* ; that it was clear Words might amount to Treason ; and some Words might be of more pernicious Consequence than Actions : And that

that to counsel his Majesty to bring 8000 *Irish*, did not only touch on the Safety of the Crown, but on the Liberty of the People : That while he provokes his Prince, by false Insinuations, to a tyrannical Usage of his Subjects, he did not only abuse his Goodness for the present, but would render him ill thought of by Posterity. — And further, that his Lordship did not rest in Words ; but four of the Aldermen were actually committed to several Prisons that very Day they gave in their Answer about the Loan of 100,000 *l.* and it was easily determin'd by whose Advice it was done. *And Sir H. Garaway was call'd again, and prov'd their being committed, but said he did not know by whose Direction it was. And Mr. Stroud concluded, that my Lord Strafford's Words and Actions agreed in this Kingdom ; and the Miseries of this Kingdom were agreeable to his Words and Actions.*

Page 599.

In this Article it is charg'd, *That the Lord Strafford, being Lieutenant-General of his Majesty's Forces against the Scots, impos'd a Tax of 8 d. a Day for the Maintenance of every Soldier of the Train'd-Bands in the County of York, &c.*

Page 600.
Article 27.
Charges him with laying a Tax upon the County of York.

Mr. Maynard open'd this Article, and his Lordship's Answer to it. He said it was true the County did draw up a Petition, offering his Majesty their Assistance ; and likewise desir'd a Parliament for Redress of their Grievances ; and that they desir'd my Lord Strafford to deliver it, but he refus'd ; and the Gentlemen being gone Home, he did, in the Name of some of his Friends and Dependants, and the Recusants of that County, prefer another Petition.

Page 601.

Then the first Petition was produc'd, and read, being attested by Sir Hugh Cholmley and Sir Philip Stapleton, and was to this Effect.

Page 602.

That they were much griev'd and discourag'd by some Warrants that were executed for levying Money, which they conceiv'd were illegal ; and that their Country was so much impoverish'd, that they were not able to satisfy his Majesty's Expectations therein, and therefore they petition'd, that his Majesty would accept of their Endeavour to prevail with the Country to raise a Month's Pay for their

The Petition of the County of York.

Militia ; and that his Majesty would declare his Pleasure for calling a Parliament, &c.

Page 603.

Sir *Hugh Cholmely* further depos'd, That this Petition was shewn my Lord *Strafford*, who said, that leaving out that Clause for calling a Parliament, he would join with them in it. That this Petition being rejected, my Lord *Strafford* went with some Message to the King (he thinks for the maintaining the Train'd-Bands for a Month :) And many of them who subscrib'd the Petition, not consenting to it, met together, and made a Protestation against it ; but did not deliver it to his Majesty as they intended : And he knew of no other Petition than that which had been read.

Sir *Henry Cholmely* was sworn.

He depos'd, That being one of the Colonels of the Train'd-Bands, and acquainting my Lord *Strafford*, that notwithstanding the Warrants sent out, no Money came in ; and that his Regiment must shortly disband for want of Money : His Lordship answer'd, he would send a Levy on the Goods of those that refus'd, but he did not know of any such Levies made.

Sir *John Hotham* was sworn.

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He depos'd, That when the Gentlemen brought the Petition to my Lord, he made a Scruple of delivering it, unless they put out the Clause concerning the Parliament ; and some of the Gentlemen thought it fit to prefer the Petition without that Clause, and went from the Common-Hall where they were assembled, and delivered in something to the King, but what it was he knew not.

Sir *Philip Stapleton* also depos'd, That my Lord *Strafford* excepted to the Petition, because it concluded with a Desire of a Parliament, and said, he would not deliver it, unless that Clause were left out : That notwithstanding most of them concluded to stand to that Petition. But my Lord, after many of them were gone out of Town, put it to the Vote, and upon the Vote deliver'd an Answer to his Majesty, as to the Business of maintaining the Militia, for which they had been summon'd ; but what the Answer was, the Deponent did not know

know — And he added that many of the Gentlemen that voted in that Matter were Papists.

My Lord *Wharton* depos'd, That the Gentlemen who subscrib'd the Petition desir'd him to present it to my Lord *Strafford*, and my Lord *Strafford* refus'd to deliver it to the King, unless the Clause concerning the Parliament were left out, but many of the Gentlemen refus'd to alter it; and my Lord *Strafford*, and some of the Gentlemen, who were of another Mind, went to the King, but what they did he knew not.

Page 605.

Sir *William Pennyman* was sworn, and being demanded, whether the Warrant shewn him was not under his Hand and Seal, he answer'd he ought not to answer to that Question, it tending to make him accuse himself; but the Objection was overrul'd, and he acknowledging the Hand and Seal to be his, the Warrant was read; reciting, That whereas the Lieutenant-General of the Army, by his Majesty's Command, had sent out Warrants for collecting six Weeks Pay for the Militia: These were to require them to pay in the same accordingly; and those who refus'd to pay the Money assess'd on them, should be brought in, and made to serve in their own Persons, &c. Sir *William* being ask'd whether the Warrant was grounded on a former Command of my Lord *Strafford*; He answer'd, he thought the first Warrant was granted by the Vice-President, and he believ'd some had been issued by my Lord.

A Witness compell'd to give Evidence where it tended to make him accuse himself.

Warrants for levying six Weeks Pay.

Page 606.

Being ask'd, whether the Deputy-Lieutenants did not issue an Order that those who would not pay in the Money assess'd on them should serve in Person; and whether they were not induc'd to do it on an Allegation that the Lords of the great Council commanded it, or consented to it: He answer'd, that my Lord did tell them, when they went to draw the Warrant, that he had acquainted the Lords of the great Council, and his Majesty, with it, and that he did it by their Consent; and accordingly they express'd it to be so in the Preamble of their Order.

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Sir *Henry Griffin* was sworn.

He depos'd, That he heard my Lord *Strafford* say,

say, that he had Direction from the great Council to levy Money for Sir *William Pennyman*, and Sir *Thomas Davies's* Regiments; or else they [the Deputy-Lieutenants] would not have set their Hands to the Order. — And he added, that to the best of his Remembrance my Lord *Strafford* directed the Money to be levy'd in the manner express'd in the Order.

Mr. *Robert Strickland* also depos'd, That my Lord *Strafford* said, the great Council had directed Warrants should be issu'd for levying Money.

Sir *John Burrows* being sworn, desir'd their Lordship's Directions, Whether he being Clerk of the great Council, might discover what had been debated there; and having their Lordship's Order to deliver his Evidence, he said, He knew of no such Order made by the great Council; and that when some of the Lords understood it was recited in the Warrant to be issued with their Assent, they were startled at it: That thereupon my Lord *Strafford*, on the 27th of *October* (being the last Day the great Council of Peers was held) did take Notice in Council, that some such thing had been done at *Rippon*, and said, he did conceive he had the King's Order, and their Lordships Approbation, for issuing out this Warrant: But since their Lordships dislik'd it, he was very willing to withdraw the Warrants. And appealing to his Majesty, whether he had not his Order and Approbation; the King answer'd, he did acquaint him with it before the Lords. — The Deponent added, that several Lords spoke to it, but they all declin'd making any such Warrant, though he did not remember they gave any Directions for calling in those that had been issued.

Mr. *Henry Cholmley* depos'd, That he heard my Lord *Strafford* say in the Presence-Chamber at *York*, it had been always the Custom that the private Men should serve in Person, or maintain the Charge of those that serv'd for them; and addressing himself to his Majesty, added, Sir, If you please Mr. Vice-President may, or shall (the Deponent knew not which) send out Warrants to that Purpose: But whether any were sent out, the Deponent could not tell.

William Dowfen was sworn.

He depos'd, That Mr. *Yarworth*, Serjeant-Major to Sir *William Pennyman*, came with four Musqueteers to the Lordship of *Egton*, and gave a Warrant to the Constables for Collecting the Money assess'd; and that the Musqueteers went along with the Constables from Place to Place to levy the Money: And that the Deponent was forc'd to serve in Person, in Sir *William Pennyman's* Regiment, because he did not pay.

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William Pierson was sworn.

He depos'd, That he saw the Soldiers go about with the Constables to levy the Money, and they had their Warrant from Captain *Yarworth*, under Sir *William Pennyman's* Hand.

Sir *William Ingram* was sworn.

He depos'd, That acquainting my Lord *Strafford* with the Difficulty of raising Money to subsist the Train'd-Bands, his Lordship answer'd, that the private Men must maintain their Soldiers after the Rate of 8 *d.* a Day; and if they did not he would commit them, and Order should be taken for raising the 8 *d.* a Day out of their Estates, and commanded the Deponent to speak to the Constables to make Assessments; and if any refus'd to pay the 8 *d.* a Day, he would have them know they were little better than guilty of Treason.

Sir *H. Griffin* was sworn.

He depos'd, That my Lord *Strafford* granted Warrants to the Constables for levying the Arrears of a Month's Pay for his Regiment, and it was paid thereupon: And being demanded, if it were not paid voluntarily, he answer'd, it might for ought he knew.

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My Lord *Strafford*, in his Defence, acknowledg'd he did not approve of the Clause for calling a Parliament; for that he knew at that time the King had resolv'd to call one, and he made the Gentlemen acquainted with it; and he thought it not proper the King should be press'd to it, when it was an Act of his own mere Grace: Nor must they infer from hence, that his Lordship was averse to Parliaments, for he was able to prove that no Man

Page 614.

The Earl's Defence as to the 27th Article.

was more desirous to see one than himself at that time.

Page 615.

As to the Message he was charg'd with carrying to his Majesty, and his laying a Tax upon them, he could show that the Tax was levy'd by their own Consent; and of two hundred Gentlemen that were present, there were not above three or four who dissented, and these had been examin'd before their Lordships; the rest absolutely agreed to lay aside the Petition, and gave him Commission to signify in Words to his Majesty, that they were most willing to contribute a Month's Pay for the Maintenance of the Train'd-Bands, and he faithfully deliver'd the Message accordingly.

Then Sir Paul Neal was call'd as a Witness to prove what his Lordship had open'd. Sir Paul depos'd, That he was present at the Common-Hall when my Lord Wharton presented the abovesaid Petition to my Lord Strafford, in the Name of the Gentlemen that had subscrib'd it. That my Lord Strafford thought the Clause concerning a Parliament superfluous, because he said the King had declar'd his Intention to have one, if at the Meeting of the Peers it should be desir'd. And thereupon it was voted by the whole Company almost, that a Message should be deliver'd to his Majesty to the Effect of the Petition, saving the last Clause concerning a Parliament. That there were about two hundred Gentlemen in the Hall at that time, and not above four or five, he could confidently swear, not above half a score Negative Voices.

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Sir Edward Osborn being examin'd, whether the major part of them that sign'd the Petition did not decline it: He answer'd, that he could not say the major part of *Them* who sign'd it, did decline it in the Hall, for he believ'd many of them were gone out of Town: But he is sure the major part of those that were in the Hall did consent to leave out the Clause; and in desiring my Lord Strafford to deliver the aforesaid Message, offering a Month's Pay: And added, that they all attended his Lordship when he deliver'd the Message; and there were not above four or five Gentlemen that open'd their

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their Mouths against it when his Lordship was desir'd to deliver it. And that he believ'd there were near 300 in the Hall when the Message was agreed on.

Sir William Pennyman depos'd, that their being some Difference in Opinion about declining the Petition, it was put to the Vote, and there were 200 Voices at least for declining it, against three or four who voted the other way: And that he himself, and divers Gentlemen, who were Members of the House of Commons, and sign'd it, did retract it. He added, that it was agreed the Message should be the same in Substance with the Petition, excepting the last Clause.

Page 618.

Sir William Savil depos'd, That he himself sign'd the said Petition, and it being disputed afterwards, whether or no they should retract it, he, and about ten more voted against the retracting it; but it being carried against them, he did, with a great Number of Gentlemen, go along with my Lord Strafford to attend the King, and he heard my Lord faithfully deliver the Substance of the Petition, and with more Advantage than the Petition was drawn; except the Business of the Parliament: And that in the part of the Country where he liv'd, the Month's Pay, which they offer'd, was cheerfully paid, and no Complaint made for want of Money.

Page 619.

Page 620.

Sir William Pennyman likewise depos'd, it was paid with a great deal of Alacrity; he heard no repining at it, then or since. — Sir Edward Osborn also depos'd, he did not know of any forcible Means us'd, but it was freely paid.

Sir Edward Rhodes depos'd, That the great Hall at York being the Place appointed by his Majesty, to consult with the Lord-President about the said Business; when they met in the Hall, my Lord-President took it amiss that they had debated the Business, and fram'd a Petition without his Knowledge before they came to the Hall: That they retracted their Petition; and though there were near 300 in the Hall, he believ'd there were not 20 against retracting it. That in the part of the Country where he liv'd, he did not hear of one Man who was against paying the Month's Pay that

Page 621.

Page 622.

had been offer'd his Majesty by the said Message ; and if there were any Differences, it was where People thought themselves assess'd above their Proportion. — And he added, that my Lord *Strafford* deliver'd the Message faithfully to his Majesty, and with great Advantage to the Country.

Page 623.
A Fortnight's
Pay levied
more than
the County of
York consented
to.

Sir *Thomas Danby* and Sir *George Wentworth* of *Wolley* depos'd to the same Effect.

My Lord *Strafford* proceeded in his Defence, and observ'd the next thing he was charg'd with, was a Warrant for levying a Fortnight's Pay for the Regiments of Sir *William Pennyman*, and Sir *Tho. Danby*. And he desir'd leave to acquaint their Lordships how that Matter was : He said, before the Month was ended, the King gave Leave to all the Regiments to return Home, except those two who were to remain upon the Frontiers : Whereupon the whole Charge lay upon those Hundreds which his Lordship represented to the Lords at *Rippon* ; telling them those Hundreds would be undone, unless the rest of the County contributed to the Charge, or else reliev'd those Regiments in their Turns. That his Majesty thought it just the rest should contribute, it being for their common Defence, and directed him to proceed in that Method : That his Lordship reply'd, if their Lordships approv'd of it, he would proceed, and several of them said Yes ; and he thereupon took it for granted they had assented ; if he was mistaken, he beg'd Pardon ; though if there was Occasion, he believ'd my Lord *St. Albans* (who was now indispos'd) would attest that several answer'd Yes : (This was just before the great Council at *York*.) That the last Day of the great Council at *York* his Lordship understanding that some of their Lordships, who were at *Rippon*, were dissatisfied, because the Warrants were said to be issued by the Assent of the great Council, his Lordship mov'd the Matter to the King before the Peers, desiring to know their Pleasure, whether the Warrant should be recall'd ; for he could easily do it then, nothing being done upon it. Some of their Lordships answer'd, they had no Authority to levy Money : To which his Lordship reply'd, That the Warrant was not to levy

Page 624.

levy Money, but that the Parties should do their Duties themselves, or otherwise pay the Money. That then the King commanding him to go on, and no one speaking to the contrary, the Warrant was not recall'd. That his Lordship consulted the Deputy-Lieutenants, and they all conceiv'd this Method would be a great ease to the Country, and it was done with their Consent, and the Money levy'd without any Force or Constraint.

Mr. *Robert Strickland* depos'd, That it was much for the Ease of the Country, that the two Regiments mention'd should stand, and the others not be oblig'd to march to their Relief; and upon that Account he subscrib'd the Warrant.

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Sir *Edward Osborn* also depos'd, That this Method being propos'd to the Deputy Lieutenants, they all conceiv'd it would be mightily for the ease of the County; for if they had been to be reliev'd by others in their Turns, some of the Regiments must have march'd seventy Miles, and these two lay near their own Habitations, some of them never stir'd out of the Towns they liv'd in — Being ask'd if this Fortnight's Pay were freely paid; he answer'd he was at *York* and could not tell; but that some Officers asking what they should do for Money for those Regiments, my Lord reply'd, That which is willingly and freely paid, you must take, the rest you must let alone.

Sir *William Pennyman* also attested the Convenience of this Method.

His Lordship added, that there were but two Warrants instanc'd in; that of Sir *Edward Osborn's*, That they should pay the Money on peril of their Lives; and his Lordship aver'd he never issued any such Warrant; and unless they produc'd such a one under his Hand, he hop'd their Lordships would acquit him of it: The other was a Warrant of Serjeant Major *Yaworth's*, to which he gave the same Answer. And that the Money being voluntarily offer'd and paid, and no Force us'd, or any such Warrant appear'd to be issued by him, he thought he must be adjudg'd clear of the Matters charg'd in this Article.

Page 626.

How-

The Earl insists that by his Commission he had Power to raise the Militia, and to compel those to pay for a Man who did not serve in their own Persons.

Page 627.

However, his Lordship said, if he had never acquainted the Great Council with the Matter, he apprehended his Commission would bear him out in doing what he did; for the Commission says, *We grant you full Power and Authority at your Discretion to command all our Lieutenants, Deputy Lieutenants, &c. to send to such Place as you shall appoint, such Number of able Men for the War, as well Horsemen as Footmen, in the said Counties, sufficiently arm'd, as you in your Discretion shall require.* That in pursuance hereof he did not send to them to pay Money, but to relieve with their Regiments by turns; and if they found it for their ease, they might be at the Charge, or else do the Duty requir'd, which by their common Allegiance every Man is bound to do. And there was a further Clause in the Commission, to indemnify his Lordship for what he should do in the Premises, and free him from all Impeachments, &c. His Lordship added, that he had no sinister Ends in what he did, and if he had err'd in the Execution of this Commission, he hop'd this last Clause would excuse him, which he conceiv'd was pursuant to the 11th of Hen. VII. c. 1. which says, *The King calling to his Remembrance the Duty and Allegiance of his Subjects, who are bound to serve the King for the time being in his Wars, against every Rebellion and Power, &c. and that it is against Law and Conscience, that Persons executing his Commands in time of War, should lose or forfeit any thing: Be it enacted, that all who serve the King in his Wars, shall not for so doing their Duty be prosecuted for Treason, or any other Offence whereby he may forfeit Lands or Goods, &c. but shall be utterly discharg'd of any Vexation, &c.* And concluded, That whatever Error he may unwittingly have committed, he did not doubt but his Commission and the said Act would acquit him of the Charge of High-Treason.

The Managers Reply as to the 27th Article.

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Mr. Maynard reply'd, That it appear'd all the Gentlemen assembled at York did not agree to the Month's Pay; and those who were for it, tho' they were a Majority, could not lay a Tax upon the rest of the Country, or bind those who dissented. That it was not a legal Way to raise Money by such Warrants, much less to levy it by Force. That his Lordship

Lordship had not given any Answer as to the Fort-night's Pay after the Month was expir'd; nor was it levied by Consent of the Lords, as he had aver'd in his Answer; and the committing of a Crime, under pretence of an Authority when he had none, was but an Aggravation of it.

That my Lord's Commission, which he had recited, spoke nothing of Money; nor was the Statute he mention'd at all to his Purpose, for that only says, That when Men are on their Allegiance, doing their Duty, they shall not be attainted of High-Treason for it; but did not justify the levying Money on the Subject in an unlawful way: And that the Warrants did not require Men first to serve, but to pay Money, and if they refused, *then* they were to be made to serve, as appear'd by the Warrant.

Then it was demanded of Mr. *Henry Cholmley*, what he heard my Lord *Strafford* speak concerning Treason, in case Men paid not that Money.

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Mr. *Cholmley* answer'd, he did not hear my Lord *Strafford* say any thing of Treason, concerning the *Non-payment*; but that we were all bound to serve the King in our own Persons; and if any refus'd, they were in little better Case than Treason, and might be severely punish'd in the Star-Chamber.

Mr. *Maynurd* proceeded and said, altho' my Lord *Strafford* would have it that this Matter did not concern him, because they did not produce any Warrant under his Hand, Sir *William Pennyman* had depos'd, that he conceiv'd the Warrant made out by the Vice-President, was on a Warrant or Command he had from my Lord *Strafford*; so that it was by Virtue of his general Command that these particular Warrants were issued, and it was not suppos'd that my Lord *Strafford* himself should sign the Warrants to every under Officer.

Mr. *Whitlock* added, That my Lord's Justification of his Actions, in the Face of the Parliament, was sufficient to condemn him——That to say, because he was Lieutenant-General of the Army, he might issue his Warrants and lay a Tax on the King's Subjects, was to take upon him the Power of Parliament, without whose Assent no Tax could be

Page 630.

be made — Here my Lord *Strafford* interpos'd, and said he thought the commanding the Men to perform their Duty, in Defence of the King and Kingdom, was very different from a Power of imposing Taxes, which he never pretended to.

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Mr. *Whitlock* reply'd, My Lord *Strafford* open'd, that by Authority of his Commission he might justify what he had done: They had prov'd he had given Warrants to levy Money, and the Money was levy'd by Force; by consequence, he affirm'd, that by Virtue of his Commission he had Power to levy Money by Force.

Mr. *Maynard* added, That my Lord *Strafford* had given no manner of Answer to what he was charg'd with; for it did not follow, that because a Man was bound to serve in Person, therefore Money might be requir'd of him, and if he refus'd it, he must be forc'd into the Service on pain of Death, as Sir *Ed. Osborne's* Warrant runs; and they desir'd that Warrant might be read, and it was read accordingly.

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To the, &c.

A Warrant for
levying 8 d a
Day to subsist
the Militia.

“ WHEREAS his Majesty is inform'd, that
“ the Regiment under the Command of
“ Colonel *Cholmley* is set forth with little Money,
“ which expressees great Disaffection to his Majesty's
“ Service, and willful Neglect of your own and
“ the whole Kingdom's Safety, the *Scotch* Army ha-
“ ving taken *Newcastle*, and being on their March
“ towards these Parts: These are therefore to will
“ and require you, in his Majesty's Name, and
“ by his special Command, to raise and cause to be
“ rais'd, by the Port Constable or otherwise, as
“ you shall think best, the Sum of twenty Shil-
“ lings and eight Pence at least, for each common
“ Soldier, belonging to [*such and such Towns or*
“ *Parishes*] and to send the same immediately to
“ *York*, to be deliver'd to the Colonel for Pay and
“ Supply of the said Soldiers; and likewise to
“ charge and command all and every Person and
“ Persons, who find private Arms, or contribute
“ thereunto, forthwith to send the like Sum, at
“ least, to *York*, to be dispos'd as aforesaid. And
“ in

“ in case any of them refuse to contribute, you are
 “ requir’d by like Command to certify me the
 “ Names of such Refusers, that a Messenger may
 “ be sent to bring them hither to serve in Person,
 “ and be severely punish’d, according to the Qua-
 “ lity of so high an Offence, seeing the Safety of
 “ his Majesty’s Person, and the Safety of the King-
 “ dom, depends on this. Fail not in the speedy
 “ Execution thereof, as you will answer the con-
 “ trary *on peril of your Life*. Dated the last Day of
 “ *August*, 1640.

Here they concluded the 27th Article; and said they had not yet resolv’d whether they should proceed on the 28th, and so the Court adjourn’d.

April 12, 1641.

Fourteenth Day.
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This Day being appointed for summing up the Evidence on both Sides, my Lord *Strafford* was directed by the Lord High-Steward to do it on his Part with all the Clearness and Succinctness he could.

My Lord *Strafford* thereupon proceeded to a Recapitulation of what had been offer’d on each Side, promising that he should not endeavour to represent the Proofs either better or worse than they were in themselves, and he wish’d the like Rule might be observ’d on the other Side, for in the Management of this Cause he observ’d they had aver’d that several Articles were fully prov’d, where he conceiv’d there was nothing fully prov’d.

Page 634.
 The Earl of
Strafford’s Re-
 capitulation.

As to the High-Treason wherewith he was charg’d, that which render’d it most grievous to him, was, that it had the Authority and Power of the House of Commons to support it — Otherwise, he said, the Innocency and Clearness of his own Heart, from so foul a Crime, was such, that the Charge would very easily be borne.

That he observ’d, as he went along Article by Article, the Managers were pleas’d to say they were not Treasons in themselves, but conducing to the Proof of Treason. And he had watch’d all along to the last, to see if he could find that poison’d Arrow that

that should invenom all the rest, that deadly Cup of Wine that should intoxicate a few alledg'd Inconveniencies and Misdemeanors to run them up to High-Treason.

That it seem'd strange to him, there being a special Difference between Misdemeanors and between Felonies and Treasons, how it was possible that ever Misdemeanors should make Felonies, or a hundred Felonies make a Treason.

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And whereas it had been said, That where a Man having threaten'd another to kill him, was taken with a bloody Knife in his Hand, these were strong Arguments to convict him of Murder; he observ'd, that then a Man must be actually kill'd, or else there could be no Murder. And so all these Things which had been said to conduce to Treason, unless some Treason were actually committed, could not affect him.

That he learnt from the Managers, That there were two sorts of Treason, viz. Treason by the Statute, and Treason by the Common-Law, or constructive and arbitrary Treasons. That constructive Treasons had a great while been Strangers to this Commonwealth, and he trusted, by their Lordships Wisdom and Justice, would be so still—
Then his Lordship proceeded to sum up the Evidence, and the Observations he had made upon it, which the Reader has seen more at large already, in his Answers to the respective Articles, to which I shall refer him, it not consisting with the design'd Brevity of this Work to repeat, or, indeed, at all necessary for the Reader's Information, tho' it might be very necessary to remind their Lordships of the Evidence and Observations that had been made upon it, in a Tryal of such various Charges, and which had been drawn out to such a considerable Length.

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His Lordship having gone through the 28 special Articles, he added, That he did not observe that either Statute or Common-Law had declar'd this endeavouring to subvert the fundamental Laws to be High-Treason, or that those Things should be Treason together (accumulatively) that were not so apart. And that he thought it very hard that he should there be question'd for his Life and Honour, upon a Law that was not extant, and which

which none could show. *And then he went on in these*
Words: "Jesu, my Lords, where has this Fire
 "lain all this while, so many hundred Years to-
 "gether, that no Smoak should appear, till it burst
 "out now to consume me and my Children? Hard
 "it is, and extreme hard, in my Opinion, that a
 "Punishment should precede the Promulgation of a
 "Law: That I should be punish'd by a Law sub-
 "sequent to the Act done. I most humbly beseech
 "your Lordships, take that into consideration; for
 "certainly it were better a great deal to live under
 "no Law, but the Will of Man, and conform our-
 "selves in humane Wisdom as well as we could,
 "and to comply with that Will, than to live under
 "the Protection of a Law, as we think, and then
 "a Law should be made to punish us for a Crime
 "precedent to the Law: I conceive no Man living
 "could be safe if that should be admitted; where
 "no Token, no Admonition is given us to be aware
 "of the Offence, what humane Providence can
 "prevent a Man's Destruction, and that instantly?
 "— May your Lordships be pleas'd to have that
 "Regard to the Peerage of *England*, as never to
 "suffer yourselves to be put upon those Moot-
 "points, upon such Constructions and Interpreta-
 "tions as these are, when the Law is not clear or
 "known — If there must be a Tryal of Wits, I
 "beseech your Lordships the Subject may be of
 "something else than of your Lives and Honours;
 "it will be your Lordships Wisdom to cast from
 "you into the Fire those bloody and mysterious
 "Volumes of constructive and arbitrary Treasons,
 "and to betake yourselves to the plain Letter of
 "the Statute, that tells you where the Crime is,
 "that so you may avoid it. And let us not, my
 "Lords, be ambitious to be more learned in those
 "killing Arts than our Fore-fathers were. My
 "Lords, it is now full 240 Years since any Man has
 "been touch'd to this height upon this Crime, till
 "myself: Let us be content with what our Fathers
 "left us, and not awake those sleepy Lions to our
 "own Destruction, by rattling up a Company of
 "Records that have lain so many Ages by the
 "Wall forgotten or neglected.

“ My Lords, it troubles me extremely, to reflect
 “ that my Misfortunes may be made a Precedent,
 “ to the Disadvantage of the whole Kingdom ; I
 “ beseech your Lordships therefore to consider my
 “ particular Case, that you do not, through me,
 “ wound the Interest of the Commonwealth ; for
 “ tho’ the Gentlemen Managers say they speak for
 “ the Commonwealth, I believe, in this Particular,
 “ I speak for the Commonwealth too ; and that
 “ the Miseries that will follow upon this will be
 “ such, as that in a few Years it will come to that
 “ which is express’d in the Statute of *Henry IV.*
 “ *That no Man will know what to do or what to say.*

“ Do not, my Lords, put those Difficulties upon
 “ the Ministers, but that they may with Chearful-
 “ ness serve the King and the State, lest it come
 “ to this, That no Man will meddle in Affairs
 “ of State, that hath Wisdom, and Honour and
 “ Fortune to lose.

Reflecting on
 the Miseries
 his Family
 would be ex-
 pos’d to by his
 Attainder ; he
 weeps, and is
 not able to go
 on.

“ I have troubled your Lordships longer than I
 “ should have done, were it not for the Interest of
 “ those *Pledges*, that a Saint in Heaven left me. I
 “ would be loth, my Lords, ----- [here his weeping
 “ prevented his going on] What I forfeit for my-
 “ self is nothing, but I confess that my Indiscre-
 “ tion should forfeit for them, it wounds me very
 “ deeply. Pardon my Infirmary ; something I
 “ should have said, but I see I shall not be able.
 “ And now, my Lords, for myself ; I thank God I
 “ have been taught, *That the Afflictions of this present*
 “ *Life are not to be compar’d with that eternal Weight of*
 “ *Glory that shall be reveal’d for us hereafter.* And so,
 “ my Lords, with all Humility and Tranquility of
 “ Mind, I submit myself clearly and freely to your
 “ Judgments, and whether that righteous Judgment
 “ shall be to Life or Death, .

Te Deum Laudamus, Te Dominum Confitemur.

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Mr. Glynn’s Re-
 ply to the Earl’s
 Recapitulation.

My Lord *Strafford* having concluded his Recapi-
 tulation, the Managers withdrew for about half an
 Hour, and then Mr. *Glynn* reply’d to it ; and first
 he observ’d, That altho’ his Lordship had intima-
 ted several Days in his Defence, *That if he had had*
longer time he could have made Things more clear, and
have

have produc'd more Proofs. Yet that he was not at all streightned in time, for he knew what was laid to his Charge three Months before; and it appear'd upon the Tryal, he had whatever he had occasion for, even Copies of Papers from the Council Table and the Parliament of Ireland, and every thing from thence that might tend to his Justification.

That notwithstanding his Lordship had often insisted, That many of the Articles laid to his Charge were prov'd but by one Witness, and the Statute of *Edward VI.* requir'd two. This was a Falacy known to his own Breast; for the Treason laid to his Charge was *the subverting the Laws*; and tho' some one Fact was prov'd only by one Witness; yet put the Witnesses together, and there were a Hundred to the whole, which was abundantly sufficient to satisfy the Words and Meaning of the Statute.

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That his Lordship had cast an Aspersion upon the Managers, saying, that they had affirm'd Things to be prov'd which were not prov'd: But they should retort it upon himself, and show that he had been that Day guilty, in the highest Degree, of what he most unjustly laid to their Charge.

That it was true, as his Lordship observ'd, where there was no Death there could be no Body convicted of Murder; but there might be Treason where there was no Death; That the *very Intention of killing the King* was Treason, and it was the *Intention of the Death of the Law* that was in question. And it had been too late to question him for the Death of the Law, if the Law had been kill'd; That the Law could not have adjudged him for Treason, when the Law itself had been subverted and destroy'd.

That *Guy Faux*, the greatest Traytor that ever was, had a fairer Excuse than my Lord Strafford, for he only discover'd Intentions of blowing up the King and the State; but his Lordship, by his Counsels and Actions, had express'd a Design of destroying the whole Kingdom, and the King's Claim by Law and by Descent—Then Mr. Glynn proceeded

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to sum up the Evidence for the Commons. After which he added, That if this Lion (alluding to an Expression of his Lordship's) now he was chain'd and muzzled, and under a Prosecution for High-Treason, would dare to vent such Language, and express such Malignity as he had in his Defence, how would he devour, how would he destroy, if he were unchain'd? That my Lord *Strafford* was question'd for High-Treason, in going about to subvert the Laws of both Kingdoms, in defence whereof their Lordships noble Ancestors had spent their Blood; and as they were the Sons of those Fathers, and the same Blood run in their Veins, he was confident they would not think that Man fit to live, who went about to destroy that which protected their Lives, Liberties and Estates.

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That their Lordships had the Complaints of three Kingdoms presented before them against this great Man, whereby they might perceive a great Storm was rais'd, that threatned their Ruin and Destruction.

That the Commons had discover'd the *Jonas* who was the Occasion of the Tempest, and, as much as in them lay, would discharge their Consciences, and cast him out of the Ship to allay the Tempest. And they expected, and were confident, that their Lordships would perfect the Work, and that with Expedition, lest, by the Continuance of the Storm, the Ship and Tackling and Mariners, both Church and Commonwealth, were ruin'd and destroy'd.

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Mr. *Glynn* was seconded by *John Pym* Esq; another of the Managers.

Mr. *Pym* shews the Nature and Consequences of the Crime with which the Earl is charg'd.

My *Pym* insisted, That by the Evidence that had been given it was clearly prov'd, That the Earl of *Strafford* had endeavour'd, by his Words, Actions, and Counsels, to subvert the Fundamental Laws of England and Ireland, and to introduce an arbitrary and tyrannical Government; That this was the envenom'd Arrow for which he enquir'd; This was that intoxicating Cup that had tainted his Judgment, and poison'd his Heart; and from thence was infus'd that specifical Difference which turn'd his Speeches, Actions, and Counsels into Treason (not cumulative, as his Lordship express'd it, as if many Misdemeanors

meanors could make one Treason) but formally and essentially, for it was the End that made the specifick Difference, and even indifferent Words and Actions might be Treason, being done and spoken with a treasonable Intention.

That it fell to his Share to shew the Nature and mischievous Consequences of the Offence, which would best appear if it were examin'd by that universal Law, to which his Lordship himself appeal'd, viz. *Salus populi*, which was the End and Design of all Laws; and therefore he should show how this Offence stood in opposition to that Law.

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And first he observ'd, that if the Law be taken away all must fall into Confusion, all kind of Mischiefs and Distempers must break in upon the State. It was the Law that entitl'd the King to the Allegiance and Service of his People, and the People to the King's Protection and Justice. That the Law was the Boundary betwixt the Prerogative and the People's Liberty; and if the Prerogative overwhelm'd the Liberty of the People, it would be turn'd into Tyranny; if Liberty undermin'd the Prerogative, it would grow into Anarchy.

Page 663.

That the Law was the Guardian of private Interest, their Lives, Liberties and Estates were all in the keeping of the Law; and without this, every Man had a like Right to every thing; and to this Condition the Lord Strafford had reduc'd the *Irish*, giving as a Reason for it, *That they were a conquer'd Nation*. But what Nation (said he) had not been conquer'd? and if succeeding Pacts and Agreements did not restrain the Right of Conquest, what People could be secure? and if the King, by right of Conquest, might still give Laws to his People, might not the People, by the same Reason, recover their Liberty if they could? And what could be more pernicious to both than such Propositions?

If the Histories of the Eastern Kingdoms were consulted, where Princes govern'd by the Earl of Strafford's Principles, as tho' they were loose and absolv'd from all Rules, Massacres and Confusion, and the

the tragical Ends of Princes, would be found very frequent there.

That it could not be for the Honour of the King, that his sacred Authority should be used in the practice of Injustice and Oppression; that his Name should be vouch'd to patronize such Crimes as the Earl stood charg'd with: Nor were these Maxims at all profitable, for they depriv'd his Majesty of the most beneficial and certain Revenue of his Crown, viz. the voluntary Aids and Supplies of his People. That those arbitrary Courses exhausted and disabled the People to assist his Majesty in time of Necessity; that they render'd him incapable of making any Figure abroad: And that had not his Majesty forsaken that Way, the Earl of *Strafford* had put him in, we should soon have been useless to our Friends, contemptible to our Enemies, and incapable of undertaking any great Design.

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That these arbitrary Proceedings were destructive to Peace, as might be observ'd from the Earl's Government in *Ireland*, where the Nobility and others were as insecure in their Persons and Estates in the time of Peace, as if the Kingdom had been under the Rage and Fury of War — That this was the greatest Discouragement to Industry and Valour; for who would take Pains to fight for that, wherein he was to have no other Interest but what was subject to the Will of another?

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That a servile Condition did generally beget a slavish Temper; and those who liv'd under the Whip and the Pillory, and such servile Engines as were used by the Lord *Strafford*, were seldom concern'd in any noble and gallant Actions, either for the Preservation or Enlargement of a Kingdom; that in case of any sudden Danger and Invasion, no Supplies or Assistance could be depended upon from such a People; but their Discontents would rather make them weary of the Government they were under, and inclinable to Change.

Page 667.
He answers
some of the
Earl's Excuses.

As to the Earl's Excuses, as first, That he ought not to be question'd for any Thing he advis'd as a Privy Counsellor according to his Conscience, be answer'd, That he that would have the Privilege of a Privy Counsellor must keep within due Bounds;

Bounds; and as the Subversion of Laws, and Violation of Liberties, could never be good or justifiable, his being a Counsellor made his Fault more heinous, as being committed against so great a Trust, endeavouring, under the Character of a Counsellor, to infect and poison his Majesty with such wicked Principles and Designs.

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As to the Danger, which my Lord *Strafford* had insinuated might accrue to their Lordships and their Posterities, if they should be question'd for Matters deliver'd in Council; it was hop'd their Lordships would rather labour to secure themselves, and their Posterity, by the exercise of Virtue than Vice.

As to that other Excuse, That whatever his Lordship had spoken was with a good Intention, he answer'd, That where Things hurtful were accompanied with such Circumstances as might make them appear useful and convenient, a good Intention might justify ill Council; but where the Matters propounded were evil in their own Nature, as these were with which the Earl was charg'd, they could never be justified by any Intentions.

As to what the Earl had urg'd of the Necessity of the Case; if there were a Necessity it was of his own making, he had brought the King under that Necessity, and must not make that a ground of his Justification which aggravated the Offence.

As to what he had so often intimated, That what he had done was for his Majesty's Service, and in maintenance of his Sovereign Power; if the Sovereign Power of the King can produce no such effect; if he cannot, by his own Will, lay a Tax upon his People, without their Consent in Parliament, then this Allegation was no Diminution, but an Aggravation of his Offence.

As to his proposing arbitrary Measures with Restrictions and Limitations; this implied a Contradiction; for even those Limitations would be subject to the same absolute Power, and might be dispenc'd with by it, and the Subject was left without all Remedy but his Majesty's Pleasure.

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That tho' he alledg'd they had prov'd nothing but Words, and no Effect follow'd; the miserable

Distempers into which he had brought all the three Kingdoms, was a sufficient Evidence of the mischievous Effects of his Counsels.

That if this was Treason in the Nature of it, it did exceed all other Treasons in this, that in the Design and Endeavour of the Author, it was to be conitant and permanent, other Treasons, how black soever, were transient; but this would not have been determin'd within one Time or Age, but have been transmitted from one Generation to another.

That to alter the Frame and Constitution of Government was Treason in any State; and the Laws would be very defective, if they had not a Power to secure and preserve themselves.

That, indeed, Life, Honour and Estate were forfeited by Treason, but this Prisoner had committed so many Treasons, that tho' he paid all these Forfeitures, he would still remain a Debtor to the State; and nothing could be more equal, than that he should perish by the Justice of that Law he would have subverted; neither was this a new way of Blood, but this Law might be trac'd to the very Original of the Kingdom; and if, as he alledg'd, it had not been put in execution these 240 Years, it was because in all that time there had not been found a Man bold enough to commit such Crimes as these.

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The Argument of Mr. Lane, Attorney General to the Prince, in behalf of the Earl of Strafford, in point of Law.

Mr. Lane's Argument, as to Matter of Law.

Declarative Statutes to be construed strictly according to the Letter.

Page 672.
As must Penal Statutes.

HE said, That as it was admitted my Lord Strafford was not within the Letter of the Statute of the 25th of *Edw. III.*, so he should endeavour to shew that he was not within the meaning of it.

And *First*, He observ'd it was a declarative Law, and such were not to be taken by Consequence, Equity or Construction, but by the Letter only.

Secondly, It was a Penal Law, and (if their Grounds, as yet unquestion'd, held good) such could admit of no Constructions or Inferences.

That by a Statute of the 21st of *Edw. III.*, for a Servant to kill his Master is Treason; and in the

23d of the same King, a Proceſs of Treason was fram'd againſt a Man for killing his Father, ground-
ed upon that Argument *a Minore ad Majus*. But it
was found in our Records, that tho' in the 25d of
Edward III, that Argument might have been ad-
mitted; yet in the 27th it could not, by reaſon of
this Declarative Law of the 25th of *Edw. III*.

That one or more Acts of Injuſtice could in
no Senſe be call'd a Subverſion of the Laws, for if
ſo, as many Judges (perhaps) ſo many Traytors,
for it was incident to every Man to err; and my
Lord *Strafford* did not plead his Innocence in Over-
ſights, but in Treason.

Acts of Injuſ-
tice can't be
conſtrued a Sub-
verſion of the
Laws.

That in the 28th of *Hen. VI. John de la Pole*,
Duke of *Suffolk*, was charg'd, by the Houſe of
Commons, with Articles of Treason not unlike
theſe, viz. That he had given the King bad Advice,
That he had embas'd the Coin, ſeſs'd Men of
War, given ſummary Decrees, impos'd Taxes,
corrupted the Fountains of Juſtice, and perſuaded
the King to unneceſſary War, and to relinquish
Anjou — But that thoſe Articles being debated
by the Lords, they found they amounted but to
Felony, and not to Treason.

The like
Charge againſt
the Duke of
Suffolk adjudg'd
but Felony.

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That another Perſon, in the 23d of *Henry VIII*,
was charg'd with ſubverting the Laws, and it was
held to be no Treason. That this alſo was the
Caſe of *Richard Larkes*, and he was convicted only
of Felony.

That it was very conſiderable in this Caſe, that
the Earl was not charg'd with having ſubverted the
fundamental Laws, but with an *Intention* to ſub-
vert them; and that an *Intention* was only treason-
able when the Life of the King, Queen, or their
Children was design'd; in other Treasons the Facts
muſt actually be committed, as well as intended to
denominate them ſuch by the 25th of *Edw. III*, as
killing the Chancellor, Counterfeiting the Broad-
Seal, the Coin, &c.

That the Inten-
tion was not
held treason-
able, unleſs it
were againſt the
Life of the
Prince, &c.

And if this was not Treason by the Statute,
neither was it by the Common-Law, for all Trea-
ſons were now reduc'd to the Particulars ſpecified
in the 25th of *Edw. III*.

No other Trea-
ſons but what
are ſpecified in
the 25th of
Edw. III.

That in the 21st of *Edw. III.*, to kill one employ'd in the King's Wars was Treason; and in the 23^d, to kill the King's Messenger was Treason by Declaration of the Common-Law upon the Statute; but that these were not Treason, but Felony only now, because of the intervening Statute of the 25th of *Edw. III.*

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That the Proviso reserving a Power in the Parliament to declare Treasons was repeal'd.

That as for the Salvo in this Statute reserving a Power in the Parliament to declare what should be Treason for the time to come; he look'd upon that Proviso to be repeal'd: For in the First of *Hen. IV.* a Petition being prefer'd by the Nobility, to have Treason limited within some Statute, an Act was made (*Cap. 10.*) upon this Petition, that this Proviso should be repeal'd, and nothing esteem'd Treason but what was literally contain'd in the 25th of *Edw. III.*; and therefore it is said in the Records, That there was great Joy at the making of this Act, in that the drawn Sword hanging over every Man's Head, by this slender Thread of a Consequence or Illation, was remov'd by that Act. Also in the First of *Mar. I.* it is declar'd, that none shall be punish'd in Life or Estate as a Traytor, but for a Crime contain'd in the 25th of *Edw. III.*, and no mention made of the pretended Salvo.

No Instance of a Treason declar'd since *Hen. IV.*

That in the Case of the Earl of *Northumberland* 5 *Hen. IV.*, which comes near this his Offence, was declar'd to be but Felony, and would have been construed Treason, if it had not been for the First of *Hen. IV.*: And he said he was confident, that since the First of *Hen. IV. cap. 10.* whereby the Proviso is repeal'd, not one had ever been declar'd a Traytor, either by the King or the Parliament, except it were upon the 25th of *Edw. III.*, or some other Statute literally and declaratively taken.

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April 21, 1641.

The Lord Digby's Speech in the House of Commons against the Bill of Attainder.

A Bill having been brought into the House of Commons, to attaint the Earl of *Strafford* of High-Treason, my Lord *Digby*, who had been one of the Managers for the Commons in the Impeachment, made a Speech against the Bill.

My

My Lord Digby said, He was still of Opinion that the Earl of *Strafford* was a most dangerous Minister, and most unsupportable to free Subjects; That he believ'd him still that grand Apostate to the Commonwealth, who must not expect to be pardon'd in this World till he was dispatch'd to another, but yet that his Hand must not be to that Dispatch, as his Conscience stood inform'd; he had rather it was off. That he must put them in mind of the Difference between Prosecutors and Judges, and how unbecoming that Fervour was in them now they were Judges, which, perhaps, might be commendable in them as Prosecutors. That it was honest and noble to be earnest in order to the Discovery of Truth, but when that was brought to light, their Judgment thereupon ought to be calm and cautious.

That the Grounds whereupon he deliver'd his Opinion to the House, that the Earl ought to be prosecuted for High-Treason, were vanish'd; and for that Reason he beg'd Leave to alter his Opinion.

That before he gave his Consent to the Accusation, he was assur'd that it would be prov'd, the Earl had advis'd the King to employ the Army of *Ireland* to reduce *England*. That Secretary *Vane's* Notes, from which this was said to be prov'd, appear'd to be but disjointed Fragments, that no Man could make any thing of; That none of the Council, but Sir *Henry*, heard any thing of the Words, and he seem'd to vary in his Testimony. That the first Time the Secretary was examin'd, concerning the Army in *Ireland*, he said positively, *I cannot charge him with that*. That being examin'd about it at another Time, Mr. Secretary answer'd again, *I can say nothing to that*. And yet at a Third Examination he came and depos'd, that the Earl of *Strafford* said to his Majesty, *You have an Army in Ireland, which you may employ here to reduce this Kingdom*. That these Circumstances induc'd his Lordship to discard that grand Article concerning his desperate Advice to the King, of employing the *Irish* Army here; which, had it been prov'd, he could have condemn'd him with Innocence, as he had

The Lord Digby shows that the Commons fail'd in their Proofs against the Lord Strafford, which occasion'd his altering his Opinion.

had prosecuted him with Earnestness; but as the Case stood, he could not satisfy his Conscience in doing it.

That he had no Notion of any Body's Intent to subvert the Laws treasonably, or by Force; and this Design of Force not appearing, his other wicked Practices could not amount to so high a Crime. That there was a more natural Spring from whence to derive his other Crimes, than to bring in Tyranny and to enslave them and his own Posterity, viz. Pride, Revenge, Avarice, Passion, and Insolence of Nature; but had this of the *Irish* Army been prov'd, it would have diffus'd a Completion of Treason over all.

That his Crimes might, perhaps, render him worthier to die than many a Traytor; and there might be reason to enact they should be Treason for the future; but God forbid he should give Judgment of Death on any Man, and ruin his innocent Posterity, upon a Law made *a Posteriori*.

Page 53.

That the Parliament had a judicial Power and a legislative; the Measure of one was what was legally just, of the other what was prudentially and politically fit for the Good and Preservation of the whole; but these were not to be confounded in Judgment, they must not piece up want of Legality with matter of Convenience.

And that he was satisfy'd that neither the Lords nor the King would pass the Bill; and that it would cause great Divisions in the State; and therefore he advis'd they should lay aside this Bill of Attainder, and think of another (saving only Life) such as might secure the State from my Lord *Strafford*, without endangering it as much by a Division concerning his Punishment, as the Earl had endanger'd it by his Practices.

That every Man should lay his Hand upon his Heart, and consider what they were about to do, whether Justice or Murder; and if not Murder with the highest Aggravations; for, as Casuists held, that he who lies with his Sister commits Incest, but he who marries her sins higher by applying God's Ordinance to his Crime; so he that committed Murder with the Sword of Justice heightened

heightened that Crime to the utmost — That he saw the best Lawyers in diametrical Opposition, as to the Nature of the Offence; That they would do well therefore to divest themselves of all Passion and personal Animosity before they pass'd Judgment, as well as of all other unjustifiable Considerations — That neither an Apprehension of the People being incens'd if his Blood was spar'd; or that it was not fit that one, who was accus'd by the Commons of High-Treason, should escape with Life; of all such corrupt Motives his Lordship did before God discharge himself, and wash his Hands of the Earl of *Strafford's* Blood.

He urges, that no Arguments drawn from the Expedience, or even Necessity of taking off the Earl, ought to weigh with them.

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The Bill of Attainder passes the Commons.

The same Day, the 21st of *April*, the Bill was read a third Time by the Commons, and upon the Question, the Lord *Digby* and Mr. *Lloyd* were appointed Tellers for the Yeas, and Sir *Gilbert Gerard* and Sir *Thomas Barrington* Tellers for the Noes; and there appear'd to be Yeas 204, Noes 59.

Then the Bill was sent up to the Lords by Mr. *Pym*, and he was order'd to acquaint their Lordships, That it was a Bill that highly concern'd the Commonwealth, especially in the expediting of it.

Who presses the Lords to expedite it.

Mr. *Pym* reported, That he had deliver'd the Bill of Attainder as he was commanded; and acquainted their Lordships that the Commons were ready to justify the Legality of the Bill.

Thursday, April 22, 1641.

The Commons receiv'd a Message from the Lords, that they had agreed to hear the House in *Westminster-Hall*, as to the Matter of Law, on *Saturday* next. Whereupon the Commons appointed Mr. *Sollicitor St. John* to maintain the legal Part of the Bill of Attainder; and Mr. *Glynn* and Mr. *Maynard* were appointed his Assistants; but it was put off to the 29th of *April*.

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April 23. 1641.

Exceptions were taken in the House of Commons to my Lord *Digby's* Speech on the Bill of Attainder; but his Lordship rising up and explaining

Exceptions taken to the Lord *Digby's* Speech by the Commons.

explaining some Passages in it, the Matter was drop'd.

April 24, 1641.

The Citizens
petition for
Justice against
the Earl.
Page 57.

Two Petitions from the Citizens of *London* were read; one was directed to the House of Commons, and the other to the Honourable Assembly of the Lords and Commons, desiring to have their Grievances redress'd, and Justice done upon the Earl of *Strafford*, and other Incendiaries and Offenders, without which the Petitioners conceiv'd that neither their Lives, Liberties, or Estates could be secured, which Petition was subscrib'd by twenty Thousand Hands.

The Commons sent up the last Petition to the Lords, urging them again to expedite the Bill of Attainder.

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Wednesday, April 28, 1641.

He is close confin'd.

Mr. *Edward Hide* was sent with a Message to the Lords, to desire the Lord *Strafford* might be close confin'd, the Commons fearing his Escape.

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Mr. St. John's Argument as to the Legality of the Attainder of the Earl of *Strafford*, the 29th of April, 1641.

Mr. St. John's
Argument, as to
the Legality of
the Earl of
Strafford's At-
tainder.

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Different Mea-
sures of Punish-
ment for the
same Offence
in different
Countries.

MR. St. John acquainted their Lordships, That the Business of the present Conference was to shew what induc'd the Commons to pass the Bill of Attainder; and first he observ'd, That in several Countries there were different Measures of Punishment for the same Offence. That willful Murder in *Ireland* was Treason, as was the willful burning of a House or Stack of Grain there: And in the Isle of *Man* it was Felony to steal a Hen and not a Horse; and the Judges were guided, as they ought, by the Laws of their respective Countries.

That here in *England* the same Law which enabled inferior Courts to judge according to the Laws already made, empower'd the Parliament to make new Laws: But tho' this way of Bill were just and legal, this was not the only thing that put the

the Commons upon it; they did not intend to make a new Treason and condemn my Lord Strafford for it; they were mov'd by other Considerations.

First, The Commons observ'd, that in all former Ages, where Doubts in Law arose of great and general Concernments, the Parliament was usually consulted, which was the reason that many Acts were only declarative of the old Law, not introductive of a new.

The Commons Reasons for passing the Bill of Attainder.

Secondly, They proceeded this way to obviate those Scruples and Delays, which, through a Disuse of Proceedings of this nature, since the Statute of the First of Hen. IV. might have arisen in the method of Proceedings; and because of some Doubts that might be started, whether the declaratory Power of Parliament be taken away, in what manner it was to be made, and by whom, finding not any Attainder of Treason in Parliament for near 200 Years, but by this way of Bill.

Admitted that there had been no Attainders for any Treasons but those specified in the 25th of Edw. III, for 200 Years, except by Bill.

Thirdly, In respect of the Proofs; for if it should happen that the whole Evidence given was not contain'd in the Charge, yet such Evidence might be made use of in this way of Bill, and it was not requisite there should be any Articles or Charge at all; and so in the Case of double Testimony, according to the First of Edw. VI, tho' that might be insisted on in a judicial Way, yet, in case of a Bill, private Satisfaction to each Man's Conscience was sufficient, altho' no Evidence was given at all. That the Proceedings by way of Bill was not to decline their Lordships Justice in the judicial Way, in these Exigencies of the State, but to husband Time, by silencing those Doubts, they conceiv'd it the speediest and surest Way.

Page 677.

But that in passing a Bill of Attainder, neither Articles, Charge, or Evidence were necessary; but private Satisfaction to every Man's Conscience was sufficient.

Thus much as to the manner of Proceedings. The next thing he said the Commons took into their Consideration, was the Matter and Merits of the Cause.

1. And he urg'd first, That my Lord Strafford was guilty of High Treason within the Statute of the 25th of Edw. III, by levying War, as laid in the 15th Article.

2. If not of actual levying War, yet he was guilty of Treason in advising and declaring his Intention

tention of War by *Savil's* Warrant; and advising the bringing over the *Irish* Army; for tho' it were not within the Clause of levying War, unless a War was actually levy'd, yet it came within the first Treason of the 25th of *Edw. III.*, of compassing the King's Death.

3. If neither of these two single Acts were within the Statute of the 25th of *Edw. III.*, yet putting all together that had been prov'd, there was Treason within the first Clause of compassing the King's Death, *Et si non profunt singula, juncta juvant.*

Page 678.

4. That he had sels'd Soldiers on the Subject contrary to the *Irish* Statute of the 18th of *Hen. VI.*

5. That he had endeavour'd to subvert the fundamental Laws, which was Treason at the Common-Law; and Treasons by the Common-Law were not taken away.

6. In case all the rest should fail, it was just and necessary to resort to the supreme Power in Parliament.

Raising Forces on a private Account not deem'd a levying War within 25 *Edw. III.*

1. As to the First, he admitted that the raising Forces, and employing them upon a private Account, either of Revenge or Interest, was not a levying War within the Statute, as in the Case between the Earls of *Hereford* and *Gloucester*, in *Edw. I.*, who raised Forces against each other, in maintenance of their respective Claims to a Castle; this was adjudg'd but Trespass, and each of the Earls fin'd 1000 Marks. So the Case of *Nicholas Huntercome*, *Hill. 15 Edw. III. B. R. Rot. 3.* who did much Spoil to the Manor of *Dorchester*, it was not held to be Treason; and it had been determin'd, that if one Township, on pretence of saving their Commons, throw down Enclosures, this is but a Riot, and no Treason: So that it is not so much the Act that was to be consider'd in levying War, but as in all other Treasons and Felonies *quo animo*, with what Intent or Purpose. But yet that this Treason of levying War extended further than the Person of the King, or that Clause of the Statute was useless; for the first Treason of compassing the King's Death fully included that before; because he which levies War against the King's Person,

Page 679.

son, does necessarily compass his Death; and he held that it was a War against the King when it was intended for the Alteration of the Laws or Government in any part of them: or to destroy any of the great Officers of the Kingdom; and for this he cited many Authorities.

But raising Forces to procure an Alteration of any Law is Treason.
Page 680.

He also asserted, that the arming and drawing Men together, tho' they did not proceed to Action, had been held a sufficient Overt-Act of levying War.

Page 681.

Then he proceeded to Application, and infer'd, That the Earl of *Strafford* by his Warrant empowering *Savil* to enforce his arbitrary Decrees upon Paper Petitions, by quartering Soldiers upon the Subject, was a sufficient Overt-Act of levying War; and that altho' there were not more Soldiers sent than it was thought necessary to enforce Obedience; yet, if there were Occasion, they were to be re-inforc'd and supported by the whole Army; so that the Army, which was rais'd and committed to the Earl for Defence of the People, was, in Breach of the Trust repos'd in him, turn'd upon them to their Destruction — That if the Earl had arm'd 2000 Men, and form'd them into Companies to this End, their Lordships would not have fail'd to have construed it a levying War; and that this was the same thing, with Breach of Trust added to it.

He holds, that the Earl giving a Warrant to enforce his Decrees, by quartering Soldiers on the Delinquents, was a levying War against the King.

Page 683.

2. That if their Lordships were not of Opinion that a War was actually levy'd, yet he thought it sufficiently appear'd that the Earl had contriv'd and advis'd the levying War, by the Warrant given to *Savil*, and advising his Majesty to employ the *Irish* Army to reduce this Kingdom.

And he asserted, that the Conspiring to levy War (or to Counterfeit the King's Coin) was Treason, as well as the Conspiring the King's Death: However, if it was not within the Clause of levying War, yet according to *Stamford*, it was within the first Clause of compassing the King's Death, as that which necessarily tended to the Destruction of King and People, and for this he quoted several Authorities.

Page 684.
Conspiring to levy War evidence of compassing the King's Death.

2. If

Page 685.

Words alone
may amount to
Treason.

Page 687.

Page 688.

Page 689.
Whether the E.
were guilty of
Treason by the
Irish Statute of
18 *Hen. 6.*

Page 694.

Page 696.
Whether Treason by an *Irish*
Statute, and
committed in
Ireland, can be
try'd by the
House of Lords
in *England*.

Page 697.
Admitted that
the Courts of
Westminster-hall
had not the Cognizance of the
Irish Laws originally, though
they have upon
Writs of Error.

3. If there were no actual War within the Statute, and if the advising a War was not Treason by it self, yet the Addition of his other Words, Counsels and Actions, would bring him within the Statute; and he cited several Books where Words had been adjudged Treason, and where Words spoken with an Intent to withdraw the Peoples Affections from the King, were held to be treasonable, *Owen's Case* 13 *Jac.* and added, that my Lord *Strafford* had by his Words, Councils and Actions, (which were more than Words) not only endeavour'd to disaffect the People towards the King, but likewise the King towards his People, to prove which, he repeated some part of the Evidence.

Then he proceeded to show that the Earl was also guilty of High Treason by the *Irish* Statute of 18 *Hen. 6.* in laying Soldiers upon the Subject without his Consent, and that this Statute still remain'd unrepeal'd. But this sufficiently discuss'd already in the Tryal, I purposely omit it here.

As to the Objection, that although the Offence were Treason by the Statute of 18 *Hen. 6.* and that Statute was still unrepeal'd, yet the Earl could not be try'd here for Treason committed in *Ireland* against the Laws of *Ireland*: He answer'd,

That Writs of Error in Pleas of the Crown, as well as in Civil Causes, have ever been brought here, even in the Courts of *Westminster-Hall* upon Judgments given in the Courts of *Ireland*; and there was no Instance of a Case being remanded back to *Ireland*, because the Question arose upon an *Irish* Statute or Custom: And if it were said, that Writs of Error were only upon a Failure of Justice in *Ireland*, and that Suits could not originally be commenc'd here, because the King's Writs do not run in *Ireland*; he answered, this might be a good Plea in the King's Bench, but it was a Question whether it was so in Parliament; for the King's Writs did not run in the Counties Palatine, or the five Ports, and yet no one wou'd say, that the Parliament could not originally hold Plea of Things done within the Jurisdictions.

That this was made good by constant Practice in the Parliament Rolls, for there were always Receivers and Tryers of Petitions appointed for *Ireland*, and for

for the *Irish* to come so far with Petitions for Justice, and the Parliament not to have Cognizance of them, was a Thing not to presum'd.

That their Laws were introduc'd by the Parliament of *England*, and it imply'd a higher Jurisdiction *Dare Leges*, than to judge by them.

Page 698.

That the Parliaments of *England* do bind *Ireland*, if *Ireland* be particularly mentioned, as was resolv'd in *Coke's* 7th Report, *Calvin's* Case.

English Acts bind *Ireland*, if nam'd.

That *Guernsey* and *Jersey*, though Parcel of the Dutchy of *Normandy*, and not govern'd by the Laws of *England*, (as *Ireland* is) yet the Parliaments of *England* have usually held Plea of, and determine all Causes concerning Lands or Goods there; and he conceiv'd their Lordships cou'd have no Case shewn them, of any Plea to the Jurisdiction of the Parliament of *England* in any Parts that were in Subjection to the Crown of *England*: He acknowledged indeed, that a Peer of *Ireland* cou'd not be try'd for Treason here, though a *Scotch* or *French* Nobleman might. *Dyer* 360. But then he observ'd, that the Earl of *Strafford*, not being a Peer of *Ireland*, could not be try'd there, and if he cou'd not be try'd here, he must be try'd no where; however, if he was not triable in the ordinary way of Judicature, there was no doubt, but he might by way of Bill; and Attainders of Treason in Parliament were as Legal, as usual by Act of Parliament, as by Judgment.

No Plea to the Jurisdiction of the Parliament of *England* to be admitted, where the place is in Subjection to the Crown of *England*.

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An *Irish* Peer cannot be try'd here, for an Offence committed in *Ireland*.

Then he came to Treasons by the Common Law, and insisted, that the endeavouring by Words, Counsels and Actions, to subvert the Laws, was Treason by the Common Law; and that Treasons by Common Law were not taken away by the 25 E. 3. but the whole Scope of that Act was only to regulate the Jurisdiction and Manner of Tryal, and confin'd the inferior Courts to those Treasons therein specified, but the others, that depended upon Constructions and necessary Inferences, were restrain'd to the Parliament. That the 1 Hen. 4. c. 10. left it upon the same bottom; that the Words in the 1 Mar. c. 1. were these, viz. That no Pains, &c. shall ensue for committing any Treason, other than such as be in the 25 Ed. 3. ordain'd and provided, any Act of Parliament or Declaration, or Matter to the contrary notwithstanding, But he held that this Statute only took away all

He maintains that Treasons by the Common Law are still in force, but restrain'd to Tryals in Parliament by the 25 Ed. 3.
Page 700.

Page 701.

But he doubted if the Parliament might judge of them otherwise than by Bill, i.e. in their Legislative Capacity.

Treasons that had been enacted or declared since the 1 H. 4. but that the Common Law Treasons were still kept on foot, according to the Proviso in the 25 Ed. 3. But he acknowledged it might be doubted, whether the manner of the Parliamentary Proceedings were not alter'd by the 1 H. 4. that is, whether since that Statute, the Parliamentary Power of Declaration of Treasons, whereby the inferior Courts receiv'd Jurisdiction, were not taken away, and restrain'd only to Bill, and that the Parliamentary Declarations were thereafter to be kept within the Parliament it self, and extended no further; for since the 1 H. 4. there were not found any such Declarations made, but all Attainders of Treason by Common Law have been by Bill: And if this were so, the Common Law Treasons still remaining, there was the same ground of Reason and Equity for passing a Bill of Treason since the 1 H. 4. as there was before for declaring it without Bill, and herein the Legislative Power was not used against my Lord *Strafford* in the Bill, it was only the Jurisdiction of Parliament.

Reasons for exercising their Legislative Authority in this Case.
Page 702.

But lest these Reasons of the Commons shou'd not satisfie their Lordships, they had given him farther in Command, why they conceiv'd in this Case, the meer Legislative Power might be exercised.

1. From the Nature of the Offence, in endeavouring to overthrow the Laws, than which he held there could not be a greater.

2. From the Frame and Constitution of the Parliament, which comprehended the whole Body Politick, and consequently had Power over every one of the Members, for the Preservation of the whole; and as in the natural Body, where one is distemper'd, he has Power to open a Vein, and let out the corrupt Blood, or cut off a gangreen'd Member, the like Power was lodg'd in the Body politick, for the Preservation of the whole.

Page 703.

And as to what was so often inculcated, that the Law ought to precede the Punishment, he answer'd, why shou'd he expect Law that wou'd take it from others? that they allow'd Law to Hares and Deers, but it was never accounted foul Play to knock Foxes and Wolves on the Head; besides, that this was

Malum

Malum in se, an Offence against the Light of Nature, against the Dictates of the dullest Conscience; that he well knew he offended the promulg'd and ordinary Rules of Law; that Crimes against Law had been prov'd, had been confess'd: So that the Question was not *de culpa*, *sed de pœna*. And tho' his Lordship had asserted, that twenty Felonies could not make a Treason, they must differ from him, if he meant it in the Use of the Legislative Power; for he that deserv'd Death for one of those Felonies, deserv'd a Death more painful and ignominious for all together: Nor had it been unusual with the Parliament to add Circumstances of Punishment where a Crime was attended with aggravating Circumstances, as in the Case of *John Hall*, who murdered the Duke of Gloucester, 1 H. 4. of *Kirby*, who kill'd the *Genoese* Envoy, 3 R. 2. of *Sir John Mortimer*, 2 H. 6. of *Richard Cooke*, who having poisoned the Bishop of Rochester's Brother, was attainted of Treason, and it was enacted, that he shou'd be boil'd to Death; and of the Maid of Kent, who pretended to a Revelation, that God was displeased with King Hen. 8. for being divorced from Queen Katherine, and she was attainted of Treason: From whence he infer'd, that altho' by the 1 Hen. 4. and the 1 Mar. they intended that the 25 Ed. 3. shou'd be a Rule to Inferior Courts, yet they left Attainders in Parliament as they were before; and in all the said Attainders there being Crimes and Offences against the Law, those Parliaments did not think it unjust (Circumstances consider'd) to heighten and add to the Punishment, and that upon the first Offender.

That the other Laws and Statutes made by their Ancestors they receiv'd as just, and made them Rules to go by in like Cases; and why shou'd they differ from them in this alone?

Mr. St. John having ended his Speech, the House adjourn'd, not a Word being offer'd by any one else; but the Lord Strafford was observ'd often to lift up his Hands towards Heaven during the Speech.

Upon Friday the 30th of April, my Lord Strafford petitioned that his Council might be heard again, as to Matter of Law, they having not spoken fully to every Particular. But it was deny'd.

That the Earl offended against the Law of Nature, and therefore it cou'd not be said that the Law did not precede the Punishment.

Page 764.
Precedents of the Parliament encreasing the Punishment after the Fact committed,

Page 705.

Saturday, May 1, 1641.

Page 734.
The King's
Speech to both
Houses concern-
ing the Earl of
Strafford.

The King came to the House of Lords, and sent for the Commons, and made a Speech, wherein he told them, that he cou'd not in Conscience condemn the Earl of *Strafford* of High Treason, and that he must acquaint them with three great Truths: 1. That he never had any Intention of bringing over the *Irish* Army into *England*, and was never advis'd by any one to do it. 2. That there never was any Debate before him of the Disaffection of his *Eng-lish* Subjects, neither had he any Suspicion of them. 3. Neither was he ever advis'd by any one to alter any of the least of the *Englisch* Laws. That he observ'd the Earl had been guilty of Misdemeanors, and he did not think he was fit to serve any more in the Commonwealth; but he hop'd there might be some Way found out to satisfie Justice, and their own Fears, without pressing upon his Majesty's Conscience, for that no Fear or Respect whatsoever shou'd ever make him go against his Conscience.

Page 755.

The Lords pass'd
the Bill of At-
tainer.

Friday, May 7, 1641.

The Lords pass'd the Bill of Attainder, and another for Continuance of the Parliament.

Saturday, May 8, 1641.

The Lords, at the Instance of the Commons, mov'd his Majesty to pass my Lord *Strafford's* Attainder.

Sunday, May 9, 1641.

The King consulted several Bishops and Judges concerning it.

Monday, May 10, 1641.

The Royal Af-
sent given to
It.

It was pass'd, together with the Bill for Continuance of the Parliament, by Commission. And,

Wednesday, May 12, 1641.

The Earl Ex-
ecuted.

Page 759.

The Earl of *Strafford* was Beheaded on *Tower-Hill*.

N. B. At the Restauration of King *CHARLES* the 2^d. the Earl of *Strafford's* Attainder was revers'd.

The

The Tryal of the Most Reverend Father in God WILLIAM LAUD, Lord Archbishop of Canterbury, which began March 12, 19 Car. I. 1643.

State-Tryals.
Vol. I.
Page 374.

ON Friday December 18, 1640, Denzil Hollis, second Son of John Earl of Clare, by Order of the House of Commons, impeach'd the Archbishop of High-Treason, and other High-Crimes and Misdemeanors, at the Bar of the House of Lords; and acquainted their Lordships that the Commons would make Proof of their Charge against him in convenient time, and desir'd that in the mean time he might be committed to safe Custody: Whereupon his Grace being order'd to withdraw, spoke to this Effect; That he was sorry for the Offence that had been taken against him, but desir'd their Lordships to look upon the whole Course of his Life, which was such, that he did verily persuade himself, not one Man in the House of Commons did believe in his Heart that he was a Traitor. Here my Lord Essex interrupting him said, *That Assertion was a Scandal upon the whole House of Commons, that they should charge him with so high a Crime which themselves did not believe.* Then his Grace desir'd he might be proceeded against in the antient Parliamentary Way: To which the Lord Say answer'd, He must not prescribe to them how they should proceed. Then his Grace withdrew, and was soon after call'd in again to the Bar, where he was delivered to Mr. James Maxwell, Usher of the Black-Rod, to be kept in safe Custody, till the House of Commons should proceed on their Impeachment: But at his Grace's Request he was permitted to go to Lambeth, attended by Mr. Maxwell, to fetch some Papers that were necessary for his Defence; and the Lords order'd, that no Member of their House should visit his Grace without Leave of the House.

His Grace impeached of High Treason generally.

He is committed to the Black Rod.

On Friday February 26, 1640, Fourteen General Articles of Impeachment were sent up from the Commons to the Lords by Sir Hen. Vane the younger

Fourteen general Articles exhibited against his Grace.

[by Mr. Pym, say Rushworth and Prynne]. Whereupon his Grace was sent for to the House, and the Articles were read to him, and were to this Effect.

And read to him.

1. That he had traiterously endeavoured to subvert the Fundamental Laws, and introduce an arbitrary Government; and advis'd his Majesty that he might levy Money on his Subjects without Consent of Parliament, and had affirm'd, that this was warrantable by the Law of God.

2. That he had advis'd and procured divers Sermons and Discourses to be made and publish'd, denying the Authority of Parliaments, and Force of the Laws, and establishing an absolute Power, not only in the King, but himself, and other Bishops, above and against the Law.

3. That by Threats and Promises to the Judges, and other Ministers of Justice, he had perverted the Course of Justice, so that the King's Subjects had been depriv'd of their Rights, and subjected to his Tyrannical Will, to their utter Ruin, &c.

4. That in the Archbishop's own Courts he had sold Justice, and taken Bribes, and advis'd his Majesty to sell Places of Judicature, and other Offices.

5. That he had caus'd divers Canons to be compos'd, containing Matters contrary to the King's Prerogative, and the Laws of this Kingdom, and establishing an unlawful Authority in himself, and his Successors: And that many of those Canons were surreptitiously obtain'd without due Consideration and Debate, and others subscrib'd to through Fear, which were not voted and pass'd in the Convocation as they ought: And that he had endeavour'd to confirm his exorbitant Power by a wicked Oath in one of the said pretended Canons, enjoin'd to be taken by all the Clergy, and many of the Laity.

6. That he assum'd a Papal and Tyrannical Power in Matters Ecclesiastical and Temporal, in Derogation of the King's Supremacy; and denied his Ecclesiastical Jurisdiction to be deriv'd from the Crown.

7. That he endeavour'd to subvert the true Religion, and introduce Popish Superstition: That he had enjoin'd divers Popish Ceremonies, and punish'd those

those who oppos'd the same with Corporal Punishment ; and vex'd others with Ecclesiastical Censures and Excommunications contrary to Law.

8. That he abus'd the Trust repos'd in him by his Majesty, intruding upon the Places of divers great Officers, and others the King's Subjects, and procur'd to himself the Nomination of Persons to Ecclesiastical Preferments which belong'd to his Majesty and others ; and prefer'd Persons to be Chaplains to the King, and to other great Promotions, who were Popishly affected.

9. That he admitted those to be his own Chaplains who were Popishly affected, and committed the licensing of Books to them, by which means divers superstitious Books had been publish'd.

10. That he had endeavour'd to reconcile the Church of *England* with the Church of *Rome* ; and to that End convers'd with Popish Priests and Jesuits, and held Correspondence with the Pope, and treated with those who had receiv'd Instructions from him : And that he had countenanc'd the establishing a Popish Hierarchy in this Kingdom.

11. That he had caus'd divers Orthodox, and learned Preachers to be silenc'd, depriv'd and vex'd, and thereby hinder'd the preaching of God's Word, and caus'd many loyal Subjects to forsake the Kingdom.

12. That he had abrogated the Privileges granted to the *French* and *Dutch* Churches in this Kingdom, endeavouring to cause Discord between the Church of *England*, and other Reform'd Churches.

13. That he had labour'd to bring divers Popish Innovations into the Kingdom of *Scotland*, in order to create a War between the two Kingdoms of *England* and *Scotland* ; and had advis'd his Majesty to subdue the *Scots* by Force of Arms ; and had forc'd the Clergy of this Kingdom to contribute towards that War ; and that when his Majesty had made a Pacification, he censur'd it as dishonourable, and so incens'd his Majesty, that he enter'd into an offensive War against the *Scots*.

14. That to prevent his being question'd for his said traiterous Proceedings, he had endeavour'd to subvert the Rights of Parliament, and incense his

Majesty against them, and labour'd to cause Divisions between his Majesty and his People, to the ruin of himself, and his Kingdoms; for which they did impeach him of High-Treason.

And the said Commons, saving to themselves the Liberty of exhibiting any further Accusation, and of replying, &c. pray'd the Archbishop might be put to Answer, and such Proceedings and Judgment had thereupon, as should be agreeable to Law and Justice.

His Grace having heard the Articles read, spoke to this Effect:

His Grace's
Speech upon
reading the Ar-
ticles.

Page 377.

That though there was a heavy Charge against him, their Lordships observ'd it was in Generals, which indeed made a great Noise, but afforded no Proof; and when they should descend to Particulars, he did not doubt but his Innocence would furnish him with a sufficient Answer to what he should be charg'd with. That as he could not acquit himself of humane Frailties, so he did not doubt but their Lordships would be favourable to them; but for any Corruption in the least Degree, he fear'd no Accuser that would speak Truth. That what touch'd him nearest was, that he should be thought to endeavour to introduce the *Romish* Superstition, and be thought false to the Religion he profess'd: And that, with St. *Jerome*, he knew not how to be patient, when Falshood in Religion was charg'd upon him. *And here he enlarg'd upon this Head, but refers his Reader to his Answer to the tenth Article.*

He is commit-
ted to the
Tower.

When his Grace had ended his Speech, he desir'd he might remain at Mr. *Maxwell's* House till Monday following, till his Lodgings were fitted up in the Tower; which was granted. And on Monday the first of March Mr. *Maxwell* carried him in his Coach to the Tower. When they enter'd *Cheapside*, the Mob gather'd about the Coach and went along with them, using Abundance of reproachful and scurrilous Language against the Archbishop, till he was enter'd the Tower Gate.

On Tuesday October 24, 1643, His Grace receiv'd an Order from the Lords dated the 23d, with a Copy of ten Additional Articles; and the Order required him to put in his Answer, in Writing, by the 30th of the same Month.

The

The said Additional Articles were to this Effect. Page 491.

1. That the said Archbishop, in order to introduce an Arbitrary Government, had in the third and fourth Year of the King caused the Parliament, then sitting, to be dissolv'd, and afterwards given divers Propositions to the Duke of *Buckingham* under his Hand, wherein he aspers'd the Parliament, affirming they us'd his Majesty like a Child; and affirm'd, that they were Factionous Puritans; and commended the Papists as harmless, peaceable Subjects.

Ten Additional Articles exhibited against him, three Years after his Commitment.

2. That for ten Years past he had endeavoured to advance the Power of the Council-Table, the Canons of the Church, and the King's Prerogative, above the Laws of the Realm; and particularly had said at the Council-Table, *That as long as he sat there, he would make them know an Order of that Board should be of equal Force with an Act of Parliament.* And at another time, *That he hop'd e'er long the Canons of the Church, and the King's Prerogative, should be of as great Power as an Act of Parliament.* And at another time, *That those who would not yield to the King's Power, he would crush them to Pieces.*

3. That to advance the Ecclesiastical Power, and pervert the Course of Justice, he had, by undue Means, prevented Writs of Prohibition being granted to stay Proceedings in the Ecclesiastical Court.

4. That a Judgment having been given in the King's-Bench against one *Burley* a Parson, upon the Statute against Non Residency, by Application to the Judges his Grace caus'd Execution to be stay'd; and being inform'd of the ill Life and Conversation of *Burley*, he said, *he had spoken to the Judges, and he would never suffer a Judgment to pass against any Clergyman by Nihil dicit.*

5. That about eight Years since he caus'd Sir *John Corbet*, a Justice of the Peace of the County of *Salop*, to be imprison'd in the *Fleet*, only for causing the Petition of Right to be read at the Sessions of the Peace for that County; and, during his Imprisonment, by a Writing under the Seal of the Archbishoprick, granted away part of the Glebe-Land of the Church of *Adderly*, of which Sir *John* was

was Patron, to the Viscount *Kilmurrey*: And that he had prevented Execution of Judgment in an Action of Wast, which Sir *John* had obtained against Sir *James Stonehouse*, and procur'd Sir *John* to be committed to Prison, by Order of the Council-Table, until he submitted to their Order, whereby he lost the Benefit of his Judgment.

6. That whereas divers Sums had been given, and Dispositions made by Persons for buying Impropriations, he had caus'd the same to be overthrown in the Court of *Exchequer*, under Pretence of buying in of Appropriations.

7. That he had harbour'd and reliev'd divers Popish Priests and Jesuits, particularly *Sancta Clara* a *Franciscan* Friar, who had written a Book traducing the Thirty Nine Articles; and one Monsieur *St. Giles*, a Popish Priest at *Oxford*.

8. That he had said there must be a Blow given to the Church, such as had not been given, before it could be brought to Conformity.

9. That in *May* 1640, after the Dissolution of the last Parliament, he caus'd a Convocation to be held of the Clergy of both Provinces, where Canons were made contrary to Law, and to the Rights and Privileges of Parliament, and of the Subject, and tending to Sedition; and caus'd a most dangerous and illegal Oath to be contriv'd, viz. "I *A. B.* do
" swear that I do approve the Doctrine and Disci-
" pline, or Government, establish'd in the Church
" of *England*, as containing all things necessary to
" Salvation: And that I will not endeavour by my
" self, or any other, directly or indirectly, to bring
" in any Popish Doctrine, contrary to that which
" is so establish'd; nor will I ever give my Consent
" to alter the Government of this Church by
" Archbishops, Bishops, Deans and Archdeacons,
" &c. as it stands now establish'd, and as by Right
" it ought to stand; nor yet ever subject it to the
" Usurpations and Superstitions of the See of *Rome*:
" And all this I do plainly and sincerely, &c."
Which Oath he had himself taken, and caus'd other Ministers to take, on Pain of Suspension, &c. And had imprison'd *Godfrey* Bishop of *Gloucester* for refusing to subscribe the said Canons, and take the said Oath, till he submitted.

10. That

10. That a Resolution being taken at the Council-Table, for assisting the King by extraordinary Means, if the Parliament should prove peevish, he wickedly advis'd his Majesty to dissolve the Parliament in 1640, and accordingly it was dissolved; and soon after he told his Majesty, that he was now absolv'd from all Rules of Government, and left free to use extraordinary Ways for his Supply.

For all which the said Commons did impeach the said Archbishop of High-Treason, and other High Crimes and Misdemeanors; saving to themselves the Liberty of exhibiting any further Accusation, &c.

Page 377.

Upon Receipt of the abovesaid Order, and Additional Articles, his Grace sent a Petition by the same Messenger, that he might be allowed something out of his Estate to bear the Charge of his Tryal; and that he might have his Papers to make his Defence, and Council, and a Solicitor, and some Servants, to attend his Business. Whereupon the Lords assign'd him Mr. Hearne, Mr. Chute, Mr. Hales, (and Mr. Gerard was afterwards added) to be his Council; but for Money they refer'd him to the Committee of Sequestrations, but gave no Answer concerning his Servants, or Papers, (which Mr. Prynn had taken from him.) Whereupon, on the 28th of October, he petition'd again, and Mr. Dell, his Secretary, was assign'd him for a Solicitor, and two Servants to attend his Business: But the Committee of Sequestrations would not allow him any thing out of his Estate, upon Glynn's telling them he might proceed in *Forma Pauperis*. But the House of Commons agreed with the Lords, that his Grace should have Copies of the Papers, that had been taken from him, at his own Charge. His Grace look'd upon it as a Hardship that he should be put to this Charge, seeing they had already taken his Estate from him, and sold his Goods.

Council and a Solicitor allow'd his Grace.

Tuesday, October 31, 1643, His Grace petition'd that the Lords would distinguish what was Treason, and what was Misdemeanor in the Articles, and give him further time to put in his Answer: Whereupon the Lords gave him till the 13th of November,

He petitions that they would distinguish what was Treason, and what Misdemeanor.
Page 378.

But to no Effect.

November, but would not declare what was Treason, and what Misdemeanor. Then his Council said, he had as good have no Council; for the Crimes were so interwoven, and connected in the Conclusion, that they might all refer to Treason, and so they might not be permitted to give any Counsel as to Matter of Fact. Upon this his Grace sent another Petition, but to no Effect.

The seventh of November 1643, he petition'd the Commons that they would distinguish the Treason from Misdemeanor, but they would not meddle with it, but left all to the Lords, and his Council's Judgment.

November 13, 1643, His Grace appear'd at their Lordships Bar, and put in his Answer in Writing, sign'd by himself, viz.

The Humble ANSWER of William Archbishop of Canterbury to the further Articles of Impeachment, &c.

His Grace's Answer.

“ All Advantages of Exception to the said Articles of Impeachment to this Defence saved ;
 “ this Defendant humbly saith, that he is Not
 “ Guilty of all or any of the Matters by the said
 “ Impeachment, charg'd in such Manner and Form
 “ as the same are by the said Articles of Impeachment
 “ charg'd.”

This Answer being put in, his Grace desir'd their Lordships to take into Consideration his great Age, being near seventy ; his long Imprisonment, being almost three Years, and this last Year little better than close Prisoner ; and that his Faculties were much impair'd by Age and Afflictions. And tho' their Lordships had been pleas'd to allow him Council, yet the Charge was so interwoven with Treason and Misdemeanor, that they could not advise him ; and he was forc'd to put in his Answer without Advice ; but hop'd he should not lose the Benefit of his Council as to Points of Law in all the Charge, and for Law and Fact in whatever was not charg'd as Treason, and some way might be found out to distinguish them, that his Council might be heard in this perplex'd Business.

The

The Lords unanimously agreed, that his Council should be heard ; and after hearing them made an Order, that they should advise his Grace, and be heard themselves in all things as to Matter of Law ; and in all things, whether Law or Fact, that were not charg'd as Treason ; and that they would think upon distinguishing them in due time.

Wednesday January 3, His Grace received an Order to appear on his Tryal, January the 8th ; but on his Petition for further time (his Council being out of Town) it was defer'd till the sixteenth.

The Tryal appointed the sixteenth of January.

On Tuesday, January 16, His Grace appearing at the Lords Bar, in order to his Tryal ; and the Committee being about to proceed upon the first general Articles, as well as upon the latter, it was observ'd his Grace had never been put to Answer the first Articles, or join'd Issue ; so that they could not proceed at that time : And his Grace was ordered to put in his Answer the 22d of January both to the Original and Additional Articles. His Grace not being able to prevail with the Lords to take his former Answer off the File, or to distinguish the Treason from Misdemeanor ; nor get Leave for his Council to speak to the Generality and Uncertainty of the Original Articles, which they declared no Man living could prepare an Answer for, he was forc'd to put in the following Answer, or they would have taken the Charge *pro Confesso*.

No Answer being put in to the first Articles, the Tryal was put off.

He answer'd, That as to the 13th of the first general Articles, or any other that concern'd any Act of Hostility, either between the King and his Subjects, or between Subject and Subject ; or which might be conceiv'd to arise upon the Coming of an *English* Army against *Scotland*, or of the *Scotch* Army into *England*, or upon any Assistance or Counsel relating thereto, &c. it is enacted, by an Act of this present Sessions of Parliament, That no mention shall be made thereof ; but such things shall be held and reputed as though they had never been done : That the Defendant is not excepted out of the said Act : And as to the rest of the said first and further Articles, this Defendant, saving to himself all Advantages, &c. saith he is Not Guilty.

His Grace's Answer to the first and further Articles.

He receives
Notice of Tryal
again.

The Managers
for the House
of Commons.

The Method
observed at the
Tryal.

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The Tryal
begins.

First Day's
Hearing.

Serjeant *Wilde's*
Speech on open-
ing the Charge.

Mr. *Prynn* not being ready for the Tryal, his Grace heard nothing further till the fourth of *March*, when he receiv'd an Order to prepare for his Defence on *Tuesday* the 12th of the same Month of *March*. And on the ninth of *March* he receiv'd a Note from the Committee who were to manage the Evidence against him, what Articles they design'd to proceed upon.

The Committee appointed to manage the Evidence were Serjeant *Wilde*, Mr. *Brown*, Mr. *Maynard*, Mr. *Nichols*, and Mr. *Hill*; and Mr. *Prynn* acted the part of a Solicitor; and had Mr. *Grice*, and Mr. *Beck*, to assist him to turn to his Papers, &c.

His Grace observes, that there never were above fourteen Lords present at his Tryal, and usually but eleven or twelve; and one third of them were gone every Day before half the Charge was given: And never any one Day were all the same Lords present at his Defence in the Afternoon that heard the Charge against him in the Morning; and no one Lord present at the whole Tryal, except the Lord *Gray of Wark* the Speaker.

That the Charge generally took up till two in the Afternoon, then he had till four given him to Answer; but neither his Council, or any Body else, were permitted to come near him till his Defence was over, except his Solicitor: That after his Defence, one or more of the Committee usually reply'd upon him; and by that time it was half an hour past seven; and then he us'd to be carried back to the Tower by Water: And tho' he was often very hot, he never was troubled with any Illness or Infirmary during his Tryal. His Grace also observes, that *Prynn* kept a sort of a School to tamper with and instruct the Witnesses against him.

Tuesday March 12, 1643.

His Grace being brought to the Bar of the House of Lords, Mr. Serjeant *Wilde* opened the Charge against him in a set Speech; the Purport whereof was, "That if the Memory of all the pernicious Practices which had been from time to time attempted against our Religion and Laws were lost, here they would find them reviv'd: That had the

" Faults

" Its of this Man been no other than those of
 " common Frailty and Inadvertency, they would
 " gladly have thrown a Veil over them ; but be-
 " ing so wilful and destructive, and so compre-
 " hensive of all Evils, the Sin would lie upon their
 " own Heads, if they did not call for Justice ;
 " which they had not defer'd so long, if the Di-
 " straction of the Times, and the Death of some
 " of the Witnesses, and of their Members, who
 " were employ'd in the Prosecution, had not render'd
 " it impracticable to do it sooner : But that there
 " was Matter enough surviv'd ; Treason in the
 " highest Pitch and Altitude, even the betraying
 " the whole Realm, and the Subversion of their
 " very Foundations. That these Crimes, of them-
 " selves so heinous, were aggravated by the Qua-
 " lity of the Offender, who had been advanc'd to
 " the most eminent Stations in Church and State ;
 " and was endowed with many great Gifts of Na-
 " ture ; but all these Advantages he had perverted
 " to the Destruction of the Publick.

" That it had been observ'd, Churchmen in all
 " Ages were the archest Seedsmen of Mischief,
 " and principal Actors in all the great Distrac-
 " tions that had happen'd. And as they meddled
 " with Temporal Things heterogeneal to their Cal-
 " ling, God was pleas'd to smite them with Blind-
 " ness, and infatuate their Counsels ; and this
 " great Prelate was an Instance of it, who employ-
 " ing his Time in State-Affairs, became the Au-
 " thor of all the illegal and tyrannical Proceedings
 " and Innovations in Religion and Government,
 " and indeed of all the Concussions and Distrac-
 " tions that had happen'd in Church and State.

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" And when by the Magnanimity of former
 " Princes, and the Wisdom of their Ancestors, they
 " had shaken off the Antichristian Yoke : And
 " when they had seen such bloody Massacres, Plots
 " and Persecutions at Home and Abroad, in order
 " to introduce it again ; that this Man should go
 " about to reduce them to those rotten Principles
 " of Error and Darkness again, it could not be ex-
 " pected but the People should be ready to stone
 " him.

" That

“ That he convey’d his Poison amongst them,
 “ under the specious Pretence of a Reconciliation;
 “ and in order to effect his Designs he countenanc’d
 “ the Preaching and Printing of Popish and *Armi-*
 “ *nian* Doctrines; and was introducing Popish Ce-
 “ remonies in all the Particulars contain’d in the
 “ Mass-Book. That to make way for these, the
 “ Book of Sports was publish’d, and the Day set
 “ apart by God *ab eterno*, was prostituted to all
 “ Looseness and Irreligion: Yet, to shew his Love
 “ to Religion (the Popes only) he held Corres-
 “ pondence with *Rome*, and the most dangerous Je-
 “ suits, and was making himself a Way to the Pa-
 “ pal Dignity.

“ That as to his Attempts against the Laws and
 “ Rights of Parliament, his Exactions, Oppressions,
 “ and Endeavours to introduce arbitrary Power,
 “ &c. they would be made fully appear in the Evi-
 “ dence; and therefore he should not insist upon
 “ them at present; and concluded, that though
 “ *Naaman* was a great Man, yet he was a Leper:
 “ And this Man’s Leprosy had so infected all, that
 “ there remain’d no Cure but the Sword of Justice,
 “ which they doubted not but their Lordships
 “ would apply, that the Commonwealth might
 “ live again and flourish.”

His Grace having obtain’d Leave to reply, spoke to this Effect.

His Grace re-
 plies to Serjeant
Wilde.

That it was a great Affliction to him to appear
 at this Bar as a Criminal, though he should be ac-
 quitted: But as to his Sentence, he was not very
 solicitous about it; for he thank’d God he had so
 spent his Time, that he was neither asham’d to
 live, nor afraid to die: Nor could the World be
 more weary of him than he was of it. But if
 none of the things, whereof these Men accus’d him,
 merited Death by Law, though he might not in
 this Case appeal to *Cæsar*, yet he might and did
 to their Lordships Justice; not doubting but God
 would protect his Innocence.

Then his Grace observ’d, That the Charge against
 him was divided into two principal Heads, *viz.*
 His endeavouring to subvert the Laws of the Land,
 and

and the Religion by those Laws establish'd. — He said, as to the Laws he had been a strict Observer of them all his Life ; and since he had had any Share in the Administration, no Man had been more guided by them than himself : As the Lord *Coventry*, if he had been living, and the learned Council who were present, and had attended the Council-Table, could testify : And how such a Behaviour, during his whole Life, in private and publick, could stand with an Endeavour to overthrow the Laws, and introduce an arbitrary Government (which his Soul hated) he could not imagine : Nay, he had ever held, that humane Laws bind the Conscience, and this Doctrine he had constantly preach'd as Occasion offer'd ; and that an Endeavour to subvert the Law was a greater Crime than to break any particular Law. And this they might see was his Judgment long before he could suspect any such Charge being brought against him, in the Book he wrote against *Fisher*, out of which he read a Passage to that Effect.

As to Religion, he was born and bred up in the Church of *England* ; and, by the Blessing of God, and Favour of his Prince, grown up to the Years that were then upon him, and to that Place of Pre-ferment which he did yet bear : And in this Church, by the Grace of God, he was resolved to die. That he had ever continued steady to his Profession and Principles, without Regard to any worldly Views, tho' if his Conscience would have given him Leave to shift his Tenets as Time and Occasion serv'd, he might easily have slid thro' all the Difficulties of this sort that had press'd him. That he had always endeavour'd, that the publick Worship of God, that was too much slighted, might be preserved, and that with as much Decency and Uniformity as might be ; for he was still of Opinion that Unity could not long continue in the Church without Uniformity. He saw that the Neglect of the publick Worship, and of the Places dedicated to that Service, had cast a Damp upon the true and inward Worship of God ; which while we live in the Body, needs external Helps, and all little enough to keep it in any Vigour ; but though he

had endeavoured to redress things, according to the Law and Canons, he did not know he had ever done it but with Consent and Liking of the People.

That he had as little Acquaintance with Recusants as any Person in the Administration : And if his Conscience would have permitted him to go over to the Church of *Rome*, he did not know any good Reason could be given for his continuing here, to endure the Libels and Slanders, and base Usage he had suffer'd before his Imprisonment, and which had ended in this Prosecution against his Life. — That he had no Pledges to sway him, no Wife and Children to detain him here, or incline him to go against his Conscience ; though if he had, he hop'd his Conscience would be heard above them ; and for Honour and Profit, he desir'd their Lordships should know he scorn'd both the one and the other, when they came in Competition with his Conscience ; though if he could have complied with *Rome*, he believ'd it would be admitted, that he would not have wanted either Honour or Profit ; and might have enjoy'd much more Ease than in the Station he was.

That he was innocent as well in Thought as Practice of any Design to alter Religion, and introduce Popery : And if nothing but Truth were spoken, he challeng'd whatever was between Heaven and Hell to say their worst against him in Point of Religion ; in which he ever hated Diffimulation : And though he might have procur'd his Safety by it, he thought it no way became a Christian Bishop to halt with God.

Lastly, It was strange, if he design'd to introduce Popery, he should have labour'd so much to reduce those who were going, or had gone over to it. And here he instanc'd in twenty two People, most of them Men of Condition, whom he had brought over to, or confirm'd in the Protestant Religion ; and challeng'd any Clergyman to give a better Account of his Zeal to the Establish'd Church : And concluded, acknowledging their Lordships Patience in hearing him ; and said he did not doubt but he should be able to answer whatever should be more particularly objected against him.

March, 13, 1643.

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Second Day's
Hearing.

His Grace was brought to the Bar again, and the Articles the Managers appointed to proceed upon, were the first and second Original Articles, and the second Additional Article, *which see before*. And this part of the Charge was assign'd to Mr. Maynard, who in Maintenance of it, after some general Allegations, read these Words out of his Grace's Diary, viz. 5th of December, 1639. *The King declared his Resolution for a Parliament, in Case of the Scottish Rebellion. The first Movers of it, were my Lord Deputy of Ireland, the Lord Marquess of Hamilton, and my self; and a Resolution voted at the Board, to assist the King in extraordinary ways, if the Parliament should prove peevish, and refuse, &c.* From hence he was charg'd, 1. with bestowing the Epithet of peevish upon the Parliament. And, 2. they infer'd, that the Vote to assist the King by extraordinary ways, &c. proceeded from his Advice.

Charg'd with
advising the
King to use ex-
traordinary
ways for a Sup-
ply.

To which his Grace replied, that if he did use the Word *peevish*, (tho' he believ'd it had been inserted since his Diary fell into other Hands) it being in his private Pocket Book, which he hop'd wou'd not have been made publick, it cou'd not be inserted with a Design to disgrace the Parliament; and that it was not said that *they were peevish*, but if *they shou'd prove peevish*, which it wou'd not be deny'd, but it was possible a Parliament might be in some particular.

2. That it was not said in the Diary, that the Vote to assist the King by extraordinary Ways was by his Counsel, but that there was a general Vote, which cou'd not be call'd or accounted his Counsel; and besides, it appear'd in the same Diary, which was produc'd as Evidence against him, to be for the *Scottish* Business, and so it was within the Act of Oblivion.

Page 386.

Then he was charg'd with saying to the King, after the last Parliament, *That now he might use his Power*, which Sir Henry Vane the Elder, then of the Council and present, attested.

And saying the
King might use
his Power.

His Grace answer'd, that he never spoke these Words, or any other to this effect, to his Knowledge; and if he had, they were ill advis'd Words,

but no Treason ; and if they had been Treason, there was but one Witness, and the Law required two, and that it was strange, at so full a Table, there was no Person of Honour shou'd remember such a Speech, but Sir *Henry Vane*.—— And further, that this, as well as the former Charge, related to the *Scottish* Business, and so was within the Act of Oblivion.

And asserting
the Legality
of Ship-money,
&c.

The next Thing charg'd upon his Grace, was his illegal pressing for Money, especially Ship-money ; and when a Sum was laid upon one *Samuel Sherman* of *Dedham*, being a Maritime Town in *Essex*, he shou'd say, it was a proper Sum, tho' the Distress amounted to eleven Subsidies.

To this his Grace answer'd, that the only Evidence was *Sherman*, and that it was in his own Cause, and that he said no more, than that he believ'd his Grace to be the Instrument of his Oppression, whereas he was censur'd by the Council Table, and not by him alone ; and lastly, if it were true, there was no Treason in it.

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Then Alderman *Atkins* was produc'd as a Witness against his Grace, and he depos'd, that when he was brought before the Council Table about Ship-money, none was so violent against him as his Grace, and that this was before Sentence was given in behalf of the King, in the Case of Ship-money ; and that at another time he press'd the Deponent to lend Money, the King being present ; and that he thought his Grace favour'd Alderman *Harrison* more than him, because the Deponent was committed, and not *Harrison*.

His Grace confess'd his Zeal for his Majesty's Service, but said it was not with any Intention to violate the Law ; and the Case instanced in was long after the Judges had given their Opinions, as to the Legality of Ship-money, under their Hands : That as to his Partiality to *Harrison*, *Atkins* only said he conceiv'd he was so, and if his Grace had favour'd him, there had been no Treason in it ; but the Reason of the Distinction was, *Harrison* gave a modest Answer, but this Man was rude and unmannerly, and was committed for that.

Then it was urg'd that his Grace had press'd upon Alderman *Chambers* too much, in the Case of Ship-

Ship-money, and in the Case of Coat and Conduct Money.

To which he answer'd, that he thought them both Lawful, and was led into that Opinion, by the exprefs Judgment of some Lords present, and the Silence of others.

It was also said his Grace had urged the Business of Ship-money against Alderman *Adams*; but he reply'd, he thought it hard, that these, and such like Acts as were done by the common Consent of the Lords at the Council Table, should be construed High Treason in him, and not in the rest.

The next thing urg'd against his Grace was, his advancing the King's Proclamations to be of equal Force with a Statute, in the Case of the *Soapboilers*; and his comparing the King to the Stone mentioned in Scripture, that *whosoever falls upon it shou'd be broken, but upon whomsoever it falls, it will grind him to Powder*. And this was attested by three Witnesses, *Griffin, Wood and Hales*.

Asserting Proclamations to be of equal Force with a Statute.

Here his Grace observ'd, that two of the Witnesses were *Soapboilers* and *Parties*, and that they and their Company having slighted all the Proclamations the King had set out, a Sentence had justly pass'd on them in the Star-Chamber; that the Words alledged to be spoken, were said to be above twelve Years since, and he hop'd none cou'd believe him guilty of them, who so well knew the difference between a Proclamation and an Act of Parliament, and that even those who managed the Evidence cou'd not believe he was so foolish to speak them, having accus'd him for a cunning Delinquent; that for the other Words spoken of the Stone in Scripture they were far enough from Treason if he had apply'd them to the King; and that if the *Soapboilers* had had an illegal Sentence pass'd against them in the Star-Chamber, it was done by the Court, and not by him, and that he was the only Means of re-settling their Trade afterwards. Then he was charg'd with the Business of Depopulations; that when a Commission was granted for compounding with some Delinquents to some Lords of the Council, (of whom his Grace was one) one *Talboys*, who was call'd before them, pleading that by the 39th of *Eliz.* he might convert some to

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Pasture; his Grace reply'd, *Do you plead Law here? Either abide the Order, or take your Tryal at the Stat-Chamber*; and that *Talboys* was fin'd Fifty pounds.

His Grace answer'd that he never sat singly on that Commission; and if any such Words were spoken, it was to shew they sat not there as Judges of the Law, but to offer his Majesty's Grace to those who wou'd accept it, and that they never impos'd any Fine, but by Consent of the Parties; and where they wou'd not accept the Favour shew'd them, they were left to the Law; and that this was the only Complaint of the Execution of this Commission, and that he imputed it to a particular Pique *Mr. Talboys* had against him.

Advancing the
Prerogative a-
bove the Law.

The next thing he was charg'd with, was his encouraging the printing of Books, which asserted the King's Prerogative to be above Law, and *Dr. Cowel's* Book was instanced in: And that Complaint being made to his Grace several times, that it was printing by *Hodgkinson*, his own Printer, in a close House; he only refer'd the Matter to *Sir John Lamb*, who slighting the Thing, the Book came out.

To this his Grace answer'd, He never heard of the Book till it was Printed, or so far gone, that he cou'd not prevent it; That the Witnesses acknowledging he was then out of Town, and that he required *Sir John Lamb* to look after it, who was a High Commissioner in this Business, of equal Power with his Grace, if *Sir John* had neglected his Duty, he ought to answer it himself; and that *Hodgkinson* was never his Grace's Printer, or employ'd by him, and that he had turn'd him out of a Place, but never put him into any.

Charg'd with
saying he hop'd
to see the Ca-
nons and the
King's Preroga-
tive equal to an
Act of Parlia-
ment.

The next Charge was, That *Dr. Gill*, School-Master of *St. Paul's School*, being warn'd out by the *Mercers Company* (who have, some way, the Care of that School). And on *Dr. Gill's* Petition to the King, the Matter being refer'd to his Grace, and some other Lords, that his Grace had said, the *Mercers* might not put out *Dr. Gill* without his Ordinary's Knowledge; and that mention being made of an Act of Parliament, he added, *That he saw nothing would down with them but Acts of Parliament, no Regard at all to the Canons of the Church*; and said

said further, that he would rescind all Acts that were against the Canons; and hop'd shortly to see the Canons and the King's Prerogative of equal Force with an Act of Parliament.

His Grace answer'd, That this Charge was prov'd by the single Testimony of *Bland*, an Officer of the Mercers Company, who was an Enemy to *Dr. Gill*; and, he suppos'd, had entertain'd some Malice against himself. And answer'd further, That by the 77th Canon, no Man might teach School but by the Licence of the Bishop of the Diocese; and by the 79th Canon, That where a School-Master offended in any of the Instances therein mention'd, he was to be admonish'd; or, if there was occasion, suspended by the Ordinary; from whence he infer'd, that the Mercers might not turn our *Dr. Gill* without the Knowledge of his Bishop.

The Ordinary's
Power over
School-Masters.

That as to the first Words charg'd upon him, he conceiv'd they need give no Offence, for tho' a greater Deference ought to be paid to Acts of Parliament, some Regard was to be had to the Canons. And for the other Words, *That he would rescind all Acts of Parliament*, it was not possible he should be guilty of them. Nor did he believe any Man thought him Fool enough to say he hop'd to see the Canons and the King's Prerogative equal to Acts of Parliament, since he had seen many Canons rejected, as being contrary to the Custom of the Place, as in chusing Parish Clerks, and repairing of Churches; and he had known the King's Prerogative discuss'd and weigh'd by Law.

Where a Canon
will not be of
force against a
Custom.

The following Charge was the Imprisonment of *Mr. Walker*, for affirming in a Sermon, That 'twas Sin to obey the greatest Monarch in Things that were against the Commands of God. That his Grace procur'd Notes of his Sermons several Years to entrap him, and told his Majesty he was factious; that *Sir Dudley Carleton* wrote to keep him close; and that his Grace pretended Kindness to him, but acted contrary.

His Grace answer'd, That for the Scope of his Sermon, that *we are to obey God rather than Man*, no one doubted it; but that there were many factious

Passages found in his Sermon upon the viewing it; yet he did not tell the King he was factious, but he was complain'd of publickly at the Council-Table; that he never had Notes of his Sermons, or us'd any such Acts against any Man: That his Commitment was first by the Council-Table, and afterwards by the Star-Chamber, where a Majority carries it, and it could not be imputed to him. That if Sir *Dudley Carleton* had wrote concerning keeping him close, he was to answer it; and that after his Grace had understood he was not factiously inclin'd, he had endeavour'd to procure him his Liberty. And he observ'd, that the Treason in these two last Charges were against the Company of Mercers and Mr. *Walker*.

Charg'd with
preferring Dr.
Manwaring.

The next Charge, was his Grace's preferring Dr. *Manwaring*, after he had been censur'd by the Lords in Parliament, for a Sermon intrenching on the Liberties and Properties of the Subject.

Refusing to
Consecrate one
elected Bishop,
a Præmunire.

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His Grace answer'd, He was not prefer'd by him, nor was any such thing prov'd, but only surmis'd: His Grace said it was true he had been complain'd of by the Parliament, for licensing the Doctor's Sermon to the Press; but it was as true, that that Matter having been examin'd by Parliament he was acquitted of it — That 'twas true his Grace had consecrated him Bishop of *Worcester*, after the Royal Assent given, and that he should have incur'd a Præmunire if he had not; and he doubted the Parliament could not have skreen'd his Grace from the Danger of it.

The next Particular urg'd against his Grace, was his commanding Dr. *Heylin* to write a Book against Mr. *Burton*, wherein was this Passage, *That a way was found to make the Subject free and the King a Subject*; and that his Grace had prefer'd the said Dr. *Heylin*.

His Grace answer'd, That he did not prefer Dr. *Heylin*, that he did indeed command him to write against *Burton*, as he thought it was his Duty to do, but he did not direct him to insert any thing that was unfit to be said; and if there was any such thing in the Book he must answer for himself. And as to the Words taken notice of, they were these,

You

You have found out a Way (not the Law, but you, Mr. Burton) to make the Subject free and the King a Subject: And his Grace was of Opinion too, that it might have become Mr. Burton to have left the King some Liberty as well as the Subject.

Then 'twas urg'd, That his Grace prefer'd Men to be Chaplains to the King and Prince, who were disaffected to the Publick; and that it was Recommendation sufficient to his Grace that they were such, particularly Dr. Dove was prefer'd by him, who had written against Burton.

His Grace answer'd, He did never knowingly prefer any who were disaffected to the Publick; and for Dr. Dove's Book he had never read it, or heard of the Passage complain'd of till now. That he did, indeed, give in a List of Preachers for the Prince's Chapel, at his Majesty's Desire, among whom Dr. Dove was one, and they were approv'd of by the then Lord Chamberlain; and if Dr. Dove had used any Expressions which had given Offence to any Member of the House of Commons, he must answer for it himself.

The last Charge this Day, was the giving of Subsidies to the King in Convocation, without Consent of Parliament; and that it was said in that Act of Convocation, *We do this according to the Duty which by Scripture we are bound unto*; which reflected on the Liberties of Parliaments.

Charg'd with granting Subsidies in the Convocation.

His Grace answer'd, That this was the Act of the whole Convocation; and the Grant was no other, nor in other manner, than what had been granted to Queen Elizabeth, in Archbishop Whitgift's Time; and that the Clergy ever had a Power of granting their own Subsidies, &c. And as to their saying they did it according to their Duty and the Rules of Scripture, he thought it a fitting Expression for Men of their Calling; and it was not said with a Design of giving Law to others, or to violate the Law in the least.

The Clergy a Power of granting their own Subsidies.

After the Hearing, his Grace was order'd to appear again on Saturday, March the 16th; and a Note was given him by the Committee, that they intended to proceed next upon part of the Second Additional Article, the Third Original, and the Third

Third and Fifth Additional Articles. *Which see before in the Articles.*

Third Day.

Saturday, March 16, 1643.

His Grace appear'd at the Lord's Bar again; but there having been some strict Charge given to look to the Tower since his Grace appear'd last, his Solicitor had not been permitted to come to him; whereupon he mov'd that his Hearing might be put off, and his Solicitor permitted to come to him, to enable him to proceed in his Defence, which was granted, and the Hearing was put off till the *Monday* following.

Fourth Day.

Monday, March 18, 1643.

Charg'd with pulling down the Houses about St. Paul's to repair the Church.

The first thing the Bishop was charg'd with, was the causing certain Houses about St. Paul's to be demolish'd; and his Diary was produc'd as Evidence against him, wherein he had express'd some Design of getting that antient Fabrick repair'd: And three Orders of Council were produc'd for compounding with the Tenants, and pulling down their Houses if they refus'd to compound.

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His Grace answer'd, That when he came to the Bishoprick of *London*, he thought himself oblig'd to endeavour the Repair of that Church, which was then ready to sink into its Ruins; and especially the Body of it, which, by the local Statutes, the Bishop was to repair, while he enjoy'd the Lands which belong'd to that Church, and which very well enabled him so to do, till some sacrilegious Hands despoil'd that Bishoprick of them. As to the demolishing the Houses, they were built upon the Church-yard, which was consecrated Ground, and so near the Church, that it was impracticable to repair it till they were pull'd down; and that it cost 8 or 9000*l.* to compound with the Inhabitants for taking down these Houses, tho' they had no Right to stand there: That it was not pretended one Penny of the Money had been misapply'd that had been rais'd for the Repairs; and that indeed he had contributed 1200*l.* out of his own Purse towards this Work; and that his Grace had done nothing in it without the Approbation and Order of his

his Majesty, or the Lords of the Council, or both. — And whereas it was said, That the King's Commission was not a legal Warrant for demolishing these Houses; his Grace reply'd, That Houses more remote from *St. Paul's* were pull'd down by the King's Commission in *Edward III's* Time, and desir'd time to produce that Record. And he observ'd, That in King *James's* Time, when a Commission issued for demolishing these very Houses, the thing was highly applauded; and yet no Care was then taken for Satisfaction to any private Person; and added, that whenever these Buildings were erected, the Dean and Chapter did very ill to take this Method to encrease their Rents by a sacrilegious Revenue, for he knew no Law that allow'd building upon consecrated Ground, as that Church-yard was — And as to the several Witnesses whose Houses had been pull'd down, and who appear'd against him, his general Answer was, That what was done by the Council, ought not to be imputed to him in particular.

Whether lawful to build on consecrated Ground.

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The next Thing his Grace was charg'd with, was, That his Hand was to an Order of Council; That within six Months all the Goldsmiths should provide them Shops in *Cheapside* and *Lombard-street*, and no where else, till those Shops were fill'd; and one Mr. *Bartley* was produc'd as a Witness against his Grace, whose House was taken from him by the Lord Mayor, by vertue of an Order of Council directed to him; who attested also that he was imprison'd six Months, and had recover'd fix Hundred Pounds Damage of the said Lord Mayor.

Charg'd with compelling the Goldsmiths to inhabit either in *Cheapside* or *Lombard-street*.

His Grace answer'd, That if any were put out of their Houses who dwelt among the Goldsmiths (as this Stationer did) by Order of Council, it was not to be imputed to him, and was very far from High-Treason: And whereas he was charg'd with saying, in this Case, That the Council-Board was not so weak but it might command such Things; he does not know whether he said so then; but he thought the Council-Table must be very weak indeed, if it could not command in Things of Decency, and which concern'd the Safety of the Subject, where there was no Law to the contrary. That

That those Streets were antiently appropriated to the Goldsmiths; and it did not only add to the Beauty of the City to have them plac'd together in those Streets, but when Plate was lost, it would be more easily found, than if they were suffer'd to keep their Shops in every By-place about the City.

The next thing insisted on, was his Grace's having forc'd some People to lend Money to the Church of St. Paul's; but this Article was drop'd.

Then he was charg'd, That in a tedious Suit between *Rich* and *Poole*, about the Parsonage of *North-Cerng* in *Gloucestershire*; the Matter being refer'd to his Grace and the Lord-Keeper *Coventry*, his Grace transacted the whole Business: And that Letters were sent from the Council to Sir *William Masters*, one of the Patrons, to see *Poole* instituted, and *Rich* was turn'd out after three Years Possession; and yet another Order of Reference being obtain'd to thirteen Lords, they gave it for *Rich*.

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His Grace said, he had done nothing in this but as the Lord *Coventry* directed; and that upon the Hearing, their Judgments being for *Poole* they certified accordingly, and if the thirteen Lords were not of their Opinion they could not help it, but that they gave it as their Consciences directed, and no Corruption was prov'd against them; and that afterwards this Cause came into Parliament, and *Rich* was glad to compound the Matter: However, he did not see any thing in this Matter that look'd like Treason.

The next thing was the imprisoning one *Foxlie* about Popish Books, and tendring him the Oath *ex Officio*: And *Foxlie* aver'd the principal Cause of imprisoning him, was because he insisted on naming Feoffees for certain Improvements, and the Business of Popish Books was but a Pretence; and that his Grace's Hand was first to the Order of Council.

To this his Grace answer'd, He was sure the Business of the Feoffment was never mention'd to him; and as for tendring the Oath *ex Officio*, it was the usual Proceeding of that Court; and that as to his Grace's Hand being first to the Order for his Commitment,

The Oath *ex Officio* used in the High-Commission-Court.

mitment, it was always first to an Order of Council where it was set at all; and that this being an Order of the Council ought not to be attributed to him; however, there was no Treason in it.

Then Mr. *Vassal's* Imprisonment by the Council-Board was laid to his Charge; for that Mr. *Vassal* attested that he conceiv'd he was the Author of it; and that his Grace said on that Occasion, *Why do we sit here if we be not able to judge? and that he did eat the Bread out of the King's Childrens Mouths; and that if he were in another Country he would be hang'd for it.* That he was forc'd to make a Deposit of 300 l. and that his Grace call'd him *Sirrah*.

His Grace answer'd, That Mr. *Vassal's* conceiving him the Occasion of his Imprisonment, was no Proof of it; that it was no Crime to say they might judge of Things proper for them to judge of, tho' he did not remember the Expression, no more than the other, *that he did eat the Bread, &c.* and if he did say so, it was not Treason; and for the rest he hop'd he should not be held to be the Author of all that pass'd at the Council-Board.

The next thing was concerning an Order of the Council-Board, in relation to a Grant that one *Smith* had obtain'd of a Wharf, which had been before granted to another. To which his Grace answer'd, if *Smith* thought himself aggriev'd the Law was open and he might pursue his Right.

Then the Charge, in relation to Sir *John Corbet*, was proceeded upon. Which see in the Fifth Additional Article.

His Grace answer'd, That as to his being imprison'd for what was done at the Sessions, and Bail refus'd, it was the Act of the whole Board; as was also the Order in the Business of Sir *John Stonehouse*, the Particulars whereof his Grace could not then call to mind. And that as for his Grant to the Lord *Kilmurrey* to build an Isle, it was no more than was usual; and he foresaw, if he should have denied it to the Viscount, the Complaint would have fallen heavier upon him on the other Side, that he had made a Person of his Quality, in a manner, a Recusant, by denying him that Con-
veniency which was in his Power to grant.

Then

Then his projecting to give the Ministers of *London* some Assistance, as to the Tithes, was charg'd upon him; and for this his Diary was produc'd as Evidence against him.

To this his Grace answer'd, That being their Bishop, he should have been to blame if he had not thought of it, for that their Case was very hard, all their Offerings being shrunk into a poor *Easter-Book*; and all that he had done in this Business, was to solicit the Citizens voluntarily to yield some reasonable Addition, where Right and Need appear'd; and that Mr. *Moss*, who was the Witness against him, only said, that he press'd this Business much and often.

Charg'd with
being the Cause
of the Censure
of *Burton*,
Prynn, and
Bastwick.

Next he was charg'd with being the Occasion of the Censure of *Burton*, *Prynn*, and *Bastwick*, in the Star-Chamber: and to prove this, one *Cockshot*, Servant to Mr. Attorney *Banks*, depos'd, his Master sent him to his Grace to give him an Account of the Business.

His Grace said, this might have had an appearance of Proof, if he had sent to Mr. Attorney about it; and yet considering what Relation their Cause had to the Church, even that had been no great Crime—Then were read several Warrants for Commitment, and to bar Access to them, and for seizing Mr. *Prynn*'s Books; and their Commitment to the Isles; but his Grace said these were the Acts of the Court of Star-Chamber, and could not be charg'd upon him.

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Another Order against the Aldermen of *Coventry* was produc'd, who had shown some Favours to Mr. *Prynn*; but his Grace answer'd, it was not only for Favours shown him, but for speaking contemptuously of the Sentence of the Star-Chamber; however, there was nothing in the Order that could be charg'd particularly upon him.

Prynn urg'd that his Grace gave Instructions to Mr. Attorney *Noy* to prosecute him, bearing him ill Will for bringing a Prohibition—his Grace said, he remembered nothing of a Prohibition, and so could bear him no Malice for it; and if Dr. *Heylin* had drawn up any Informations for Mr. Attorney, as *Prynn* alledg'd, he did not set him on work, nor
was

was it prov'd — That as to Mr. Attorney's approving his Book, he said much otherwise in open Court; and as to his Book being seiz'd after it was licensed, that was done by the High Commission, and not by his Grace.

Mr. *Prynn* urg'd, That he sent his Grace a Letter, and that his Grace sent it to Mr. Attorney to have him prosecuted upon it. His Grace said, whether it were a Letter or a Libel others might judge; but that he sent it to Mr. Attorney only to show him how he was us'd; and that Mr. Attorney sent for *Prynn*, and show'd him his Letter, and advis'd him not to follow this Course of libelling. And Mr. *Prynn*, in his Breviate of the Archbishop's Life, says he tore that Letter; but now upon his Oath says he made Mr. Attorney believe so, but he had it still.

Prynn says, he censur'd him for having his Hand in all the Pamphlets of those Times, tho' at the same time he doubted of it — To this his Grace answer'd, that he gave no Vote at his Censure; and further, tho' his Grace might say he doubted his Pen was in all the Pamphlets, yet he was not censur'd for those Pamphlets, but for his own — And whereas he says, he could not be suffer'd to speak with *Burton* and *Bastwick* about their joint Answer; and that his Cross-bill was refus'd; this was done by the Court of Star-Chamber, and their Lordships very well knew the Lord-Keeper manag'd the Affairs of that Court.

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Mr. *Burton* came to depose his Wife was kept from him; and Mrs. *Bastwick* depos'd she was kept from her Husband; but his Grace observ'd there was nothing in their Testimony that related particularly to him, but concern'd the Court of Star-Chamber, or High-Commission, and therefore he did not think they requir'd any particular Answer.

Then the Charge of demolishing the Houses to repair St. Paul's was insisted on again, and Witnesses brought to prove that 60 Houses were taken down, and some of them 20 Yards from the Church. To which he answer'd, it was no more than was necessary, and the Tenants had receiv'd an ample Recompence; however, he should not
take

take all the Acts of the Council-Table upon himself.

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The last Charge brought against his Grace this Day, was for being instrumental in removing two Brew-Houses, whose Smoak was an Annoyance to the King's Palace of St. James's; and the two Brewers, Mr. Bond and Mr. Arnold, were produc'd as Witnesses against him. His Grace observ'd, that their Complaints chiefly consisted of some little Stories that hardly deserv'd a Mention in this Prosecution, or else were of some Orders of Council, that could not be charg'd particularly on him; and that there was not any Proof that he had incited Mr. Attorney to prosecute them, or the Lords of the Council to do any thing against them; and to say the Lords were govern'd by him, was a most unworthy Aspersion of Men of Honour; and that if the whole had been true, it was but Treason against a Brew-House. And his Grace desir'd their Lordships to observe, that this Day there had been no less than 13 Witnesses produc'd against him in their own Causes; and that altho' so many Things had been urg'd this Day which concern'd the Star-Chamber and Council-Table, the Act for taking away the one, and regulating the other, had no respect to what was pass'd; and yet here things that were pass'd, and were the joint Acts of the Council, &c. and not his, were urg'd as treasonable; whereas the Provision that was made in the late Statute, against those who should offend for the future, only made such Offences to be Misdemeanor.

Fifth Day.

Friday, March 22, 1643.

Concerning administering the Sacrament at the Rails.

The first Thing charg'd upon his Grace this Day, was, that Mr. Newcommin of Colchester refused to administer the Sacrament but at the Rails; and that Burrows the Witness indicting him for it, his Bill was thrown out, and he was afterwards call'd before the High-Commission-Court for it, by a Warrant from his Grace; and that the Mayor would not obey an *Habeas Corpus*, and said he would obey his Grace's Warrant before the King's Writ; and

and that a Letter was sent to Judge *Crawley* and shew'd to Judge *Hutton*.

His Grace answer'd, That it was not prov'd that Mr. *Newcommin* had any Direction from him for refusing the Sacrament but at the Rails; that *Burrows* could not be taken up by his Warrant, for no Warrant ever issued from the High-Commission under three Hands: That if the Mayor spoke indiscreetly of the *Habeas Corpus*, it was not to be imputed to him; and that it appear'd from himself that the *Habeas Corpus* was allow'd, for that the Judges looking into the Business, said it was a Cheat to get Money, and return'd him back to *Colchester*; and as to the Letter, he did not so much as say it was sent the Judges by his Grace's Direction, or mention the Contents of the Letter; so that there was no colour to charge his Grace upon this Circumstance.

Ask, a Second Witness, depos'd, That some Players were taken at a Tavern at an unreasonable Hour on *Easter-Eve*, and that they pretended they came from his Grace; that on Complaint to his Grace he refer'd him to Sir *John Lamb*, and he found there was a Plot to make him an Instrument about the Rails; that Mr. *Newcommin* was indicted and the Bill found, and then that Letters missive were sent for him and his Wife, and that he went into *Holland* to avoid the Oath *ex Officio*; and that on applying himself to his Grace at *Croydon*, his Grace told him, if he were so strict against Churchmen, he must expect to be dealt as strictly with by the High-Commission.

His Grace answer'd, he knew nothing of any Players, and if any were disorderly Mr. *Ask* did well to question them. That if Sir *John Lamb* spoke to him about the Rails, he had no Commission from his Grace for it, for he knew him too well. That the Letters missive were the joint Act of the High-Commission, and could not be charg'd upon him. That the Oath *ex Officio* was then common, and, for ought he yet knew, the legal Course of that Court, so he could not help the tender of that Oath to them; but in truth they knew themselves too guilty to appear, for his Wife was a

paratist, and himself always in Opposition to the Church; and his Grace thought they were as strictly bound to prosecute him in the High-Commission, as he thought himself oblig'd to prosecute the Clergy in other Courts.

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Charg'd about
placing the
Communion
Table.

The next Charge, was the Censure of the Inhabitants of *Beckington* in *Somersetshire*, for refusing to remove the Communion-Table according to the Bishop's Order.

William Long, the First Witness, who was Foreman of the Jury when these Men were indicted for a Riot, depos'd, That he conceiv'd the Parson spoke with the Judge about it, which caused a sudden Verdict.

His Grace answer'd, Mr. *Long*'s Conceit was no Proof, and if it was, it affected the Parson and not him.

George Long, another Witness, depos'd, That the Bishop of *Bath* commanded the Communion-Table to be remov'd and set at the upper End of the Chancel; that the Church-wardens refus'd it, because 'twas an Innovation, and they were excommunicated, and appealing to the Arches were reliev'd, but that the Bishop proceeded against them again; and his Grace would not admit a second Appeal, but said they deserv'd to be laid by the Heels; that Penance was enjoin'd them in three Churches; and that 'twas reported his Grace had written to the Lord-Chief-Justice *Finch* in this Matter; and the Chief-Justice had told Mr. *Ask*, another Witness, that a powerful Hand was upon him, intimating his Grace; and that the Bishop of *Bath* laid it all upon his Grace, as was reported.

His Grace answer'd, That the placing the Communion-Table at the upper end of the Chancel, North and South, was no Innovation, for the Words in Queen *Elizabeth*'s Injunctions are, *That the Holy Table in every Church shall be decently made, and set in the Place where the Altar stood*, and that that stood North and South every one knew, and to set it East and West, had been cross the Place where the Altar stood, and not in it; that therefore the setting the Table as the Bishop commanded was no Innovation; and that had there been any Popery in it,
Queen

Queen Elizabeth, who banish'd Popery out of the Kingdom, would not have suffer'd it to be plac'd so in her own Chapel.

That if he did say they deserv'd to be laid by the Heels when they would have appeal'd a second Time, it was true enough, for their great Contempt of their Bishop; and that knowing the Willfulness of these Men, and that they had had the Benefit of an Appeal once, he did refuse to hear any more of it, unless there were new Matter. That if their Penance enjoin'd was too severe, it was the Act of their own Bishop and not his: And as for the Reports and Intimations that the Witnesses swore to, he was confident such sort of Testimony could not sway their Lordships. And if there was any Truth in what was reported that the Bishop of Bath and others had said, they ought to have appear'd themselves and attested it.

Another Charge was, That one Symms having obtain'd a Verdict for some Houses in Lombard-street, there was afterwards a Reference to his Grace and the Bishop of London, who refer'd them to the Law again, whereby Symms said he was undone.

His Grace acknowledg'd, That upon hearing the Matter, the Case did not seem to be rightly stated, and therefore they awarded there should be a new Tryal.

The next Charge was, That one Grafton an Upholsterer, who was a Brownist, had been imprison'd 12 Years ago, and fin'd 50*l.* and that he believ'd he might have obtain'd his Liberty sooner than he did, if it had not been for his Grace.

His Grace answer'd, That he was fin'd and imprison'd by the High-Commission; and that he was not then a Commissioner, and as to his being detain'd in Prison by his means, Grafton should have brought some positive Proof of it besides his own Belief, founded upon Circumstances that were not at all conclusive.

The next Charge was, That his Grace had procur'd a Presentation of a Living from the King, whereof Mr. Ward was Incumbent, under pretence it was laps'd to the Crown for Symony; and that

after Sentence had pass'd against Mr. *Ward* in the Ecclesiastical Court, his Grace sent to the Bishop of *Norwich* to admit the King's Clerk; and that a *Ne Admittas* being obtain'd, a Letter was sent by the High-Commission to the Judges to revoke it; and that afterwards, upon a Tryal at Law in a *Quare Impedit*, the King was found to have no Right.

His Grace answer'd, His Majesty had intrusted him with such Titles as accrued by Symony, and commanded him to be very diligent in it, Symony being very rife; and this Symony being offer'd to be prov'd, he did indeed procure his Majesty's Presentation, in order to try the Title. That it was no Offence to send to the Bishop of *Norwich* to admit the King's Clerk, the Church being void; and that it was the Act of the High-Commission and not his, the sending a Letter to expostulate with the Judges, whether it was not fit the *Ne Admittas* should be revok'd; and that it was usual for that Court to write, or send some of their Body to the Judges, where they conceiv'd they had been misinform'd; and in this Case the *Ne Admittas* was revok'd by the Opinion of three Judges, and therefore it was to be presum'd it was done legally: And whereas it was adjudged at Common-Law on the *Quare Impedit*, that the King had no Right; yet in the Court where his Grace set he went according to his Conscience; and tho' different Courts had determin'd differently of the Symony, it ought not to be the Foundation of a Charge against him.

The next Thing charg'd upon his Grace, was the Excommunication of one *Ferdinando Adams*, for having written over the Place where the Commissaries Court was kept in the Church, *My House shall be call'd the House of Prayer, but ye have made it a Den of Thieves*. And that a Suit being commenc'd against Mr. *Dade*, the Commissary who excommunicated him, in the Star-Chamber, his Grace advis'd Mr. Attorney not to let his Name be made use of in it, but let *Adams* prosecute in his own Name; and that when *Adams* brought an Action in his own Name, the Excommunication was pleaded to it.

His

His Grace answer'd, That *Adams* had caus'd that Sentence to be written to abuse and vilify the Court, for which he thought he well deserv'd to be excommunicated, but that it was no Act of his; and that the Motion that Mr. Attorney would leave the Matter to the common Prosecutor, was made by Mr. *Byerly* in open Court, by their own showing; but that it was also true that he did not think it fit Mr. Attorney should lend his Name in such a Cause. That his Grace did not advise the Excommunication to be pleaded; and that he might have had it taken off if he had not been obstinate; and tho' Mr. *Prynn* said there was no Appeal left him, he might have appeal'd to the Court of Delegates.

Then his Grace was accus'd, for that he complain'd to the King of Mr. *Bagshaw* the Reader of the *Middle-Temple*, and threatned to prosecute him in the High-Commission-Court, for asserting, That a Parliament might be held without Bishops; and that Bishops might not meddle in Civil Affairs.

Charg'd with prosecuting *Bagshaw* of the Temple, for saying Bishops ought not to meddle in Civil Affairs.

His Grace acknowledg'd he did complain to the King of it, and thought he should have been to blame if he had not, as the Constitution then was, tho' it had been alter'd since by Parliament; and if he did tell him he should answer it in the High-Commission-Court, it was no great Offence, at least, it did not amount to Treason.

The last Charge of this Day, was the Sufferings his Grace had occasion'd to the Lord-Chief-Justice *Richardson*, for putting down Wakes and other disorderly Meetings in *Somersetshire*; that the Chief-Justice was check'd, his Orders commanded to be revok'd, and he not allow'd to go that Circuit afterwards.

With countenancing Wakes, &c.

His Grace answer'd, That there was a Command issued by the Lord-Keeper, for revoking the Order the next Assizes, but it was not then comply'd with. That then there was an Order of Council, and upon that the Judge did revoke it; but thus far nothing affected his Grace; but that afterwards the Matter was refer'd to the Lord Marshal and his Grace, and what Award they made he did not well remember, but whatever it was the Lord Marshal concur'd in it. And his Grace was still of Opinion,

nion, that tho' these Wakes and Feasts of Dedication were sometimes abus'd, that was not a sufficient Reason for taking them away, since they were no other than what every Justice of the Peace by Law must remedy; and by the same Rule they must destroy every Vine, because the Fruit of it sometimes occasion'd Drunkenness.

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To this Charge it was added, That his Grace had taken upon him to write to Sir *John Bridgman*, Chief-Justice of *Chester*, concerning some Encroachments that were made in the *Marshes-Court*—His Grace acknowledg'd he had order'd Mr. *Dell*, his Secretary, to write to the Judge about it; but that there was nothing peremptory in the Letter; but the Words were, *if Things were rightly suggested, &c.* And he thought it his Duty, and no Offence, to write to a Judge for Information in such a Case; and if his Secretary had mistaken his Directions, it would be hard to make a Person of Honour answerable for every Slip of his Secretary; but, as it happen'd, here was nothing amiss.

Sixth Day.

Thursday, March 28, 1644.

The first Thing his Grace was charg'd with this Day, was, the Censure, Deprivation and Imprisonment of Mr. *Huntley*; and that he told Mr. *Merrifield*, who was Mr. *Huntley's* Attorney, he deserv'd to be laid by the Heels. And that his Grace said, Mr. *Huntley* being an Ecclesiastical Person, ought not to decline the Censures of the Church.

His Grace answer'd, As to *Merrifield*, he deserv'd to be committed for his contemptuous Behaviour, and accordingly was committed by the Lords of the Council for it. — That what had been done against *Huntley*, was done by the High-Commission, and was in Archbishop *Abbot's* Time; and his Grace acted but as an ordinary Commissioner. That his saying Mr. *Huntley* ought not to decline Ecclesiastical Censures, did not exclude him, or any other, from the Benefit of the temporal Laws, in things cognizable by them; but he did conceive, his Oath of canonical Obedience consider'd, he ought not to decline the Ecclesiastical Judicature in Things meerly Ecclesiastical. And his Grace
took

took leave to remind their Lordships, that there had been nothing transacted at the Council-Table, the Star-Chamber, &c. but what had been done in King James's and Queen Elizabeth's Time; and that tho' there had been many Parliaments since, no Man had been accus'd so much as of Misdemeanor for what was done there hitherto, much less of High-Treason.

The next Charge was, That his Grace threatned and imprison'd those who brought Prohibitions. That when Prynne brought a Prohibition, he said, *Doth the King give us Power and then we are prohibited? let us go and complain. And that he would lay him by the Heels who brought the next.* That when some desired an Order of Court, for pulling down a Pew that was set above the Communion-Table; he said, *They only desired an Order of Court, that they might have it to show, and get a Prohibition; but he would break the Back of Prohibitions, or they should break his.* And, That he wonder'd who dare grant Prohibitions, the High-Commission-Court being above all. And that in a Sermon, his Grace had said, *They who grant Prohibitions to the Disturbance of the Church's Right, God would prohibit their Entrance into the Kingdom of Heaven.*

Charg'd with threatening those who brought Prohibitions.

Page 405.

His Grace answer'd, He thought it no Offence to complain to the King, who was the Fountain of Justice in both Courts, where Prohibitions were unjustly granted; and if he threatned to lay him by the Heels that brought the next, it was but a hasty Expression, and not done, as Mr. Burton had experienced, who acknowledged he brought a Second on purpose to tempt his Grace: And that when Persons brought Prohibitions, they were not committed for that, but sometimes they had been for their contemptuous Behaviour; and that impudent Fellows were often pick'd out for that Service, on purpose to affront the Court; and one of them threw the Prohibition down on the Table with such Violence, that it rebounded and struck his Grace on the Breast. That as to his saying he would break the back of Prohibitions, and the High-Commission was above all, &c. he did not believe any one could think him guilty of such Expressions; and for

for his saying, those who brought them to the Disturbance of the Church's Right, would be prohibited the Kingdom of Heaven; he did not conceive any Crime in the Words, tho' he did not remember them. That there had been as many Prohibitions allow'd in his Seven Years, as in any Seven Years of his Predecessors. That there was a great difference between Prohibitions now and in the Times before the Reformation; for then they were granted to restrain a Foreign Jurisdiction, but that now they were both the King's Courts, and there could not be that Reason for them now as formerly. And however, all that he did was to endeavour that some Bounds might be set to each Court, that the Subject might not, to his great Trouble and Expence, be hurried from one Court to another: And here he quoted Archbishop *Parker*, who, in the beginning of the Reformation, had shewn that great Wrong was done to the Ecclesiastical Jurisdiction by Prohibitions.

Page 406.

Charg'd with
Bribery.

The next Charge was for Bribery, and being instrumental in selling Places and Offices, particularly in the Case of Sir *Edward Gresham's* Son, who married against his Father's Consent; and in a Suit in the High-Commission-Court, the Father recovered but 50*l.* Damages, which was imputed to some corrupt Dealings with his Grace: And that his Grace oblig'd Sir *Edward* to give half the Penalty of a Bond of 200*l.* which the Court assign'd him towards making him Satisfaction, to the Repair of *St. Paul's*.

His Grace answer'd, as to this Instance of Corruption, That he voted for greater Damages to be given Sir *Edward*, but it was carried against him, and that the Bond was entirely in his own Power, and he might have apply'd the whole to charitable Uses; and therefore there was no Colour to charge him with Corruption in this Matter.

Another Instance was, That when some *Chester* Men were fin'd 1000*l.* for entertaining Mr. *Prynn*, his Grace procur'd the Fine to be lessen'd to 200*l.* being brib'd to do it by Mr. *Stone*, who presented him with two Hogsheads of Sack.

His

His Grace answer'd, That Mr. *Stone* did send his Son-in-Law, Mr. *Wheat*, and Dr. *Bailie* to him, who had been bred in St. *John's* College under his Grace, and had an Interest in him, and on their Solicitation he did get the Fine moderated. That Mr. *Stone* did indeed send the Sack about that Time, but he directed his Steward to refuse it, which he did. That he sent it again, when his Grace, as well as the Steward, were abroad, pretending to the Yeoman of the Cellar he had leave to send it in; and when his Grace understood it, and was sending it away again, Mr. *Stone* met him, and beg'd him to accept it, as an Acknowledgment for the many Favours he had done his Son-in-Law; and that it had no relation to the *Chester* Men's Business, and beg'd he would not disgrace him by sending it back again; and yet afterwards he set a Price upon the Sack, and set it down to the *Chester* Men's Account: And Mr. *Wheat* being in Court, attested the Thing was done purely on his Solicitation; and that his Grace agreed to the Mitigation before he went out of Town, and there had been no tender of any Sack then, or any thing else. And his Grace said, he look'd upon this as a Contrivance of the Faction to blacken him; and that Mr. *Brown*, in summing up the Evidence, did not so much as mention this, for that he and his greatest Enemies were ready to acquit him of it.

Page 407.

Another Instance was, That his Secretary receiv'd 150 *l.* to get his Hand to a Petition to the Lord-Keeper.

His Grace answer'd, His Secretary was in Court and must answer it, he knew nothing of it: And Mr. *Dell* call'd a Witness and acquitted himself of this Asperſion.

Then 'twas said he made use of the Name of St. *Paul's* to procure himself Money illegally: And that he committed Sir *James Price* in the High-Commission-Court, and accepted a Fine.

His Grace shew'd, his Majesty gave him the Fines of that Court for the Repair of St. *Paul's*; and that it was as lawful to commute with Offenders in that Court as any other; and it had been the

the usual Practice to commute, where the Offenders were Men of Quality.

The next Instance was concerning the Lease of the Rectory of *Whaley* in *Lancashire*; his Grace was charged with wresting it violently out of the Hands of Sir *Ralph Asbton*, who had a Lease for three Lives in it, and making him accept a Lease for Years, and pay a Fine to the Repair of *St. Paul's*, and raise the Rent 60 *l. per Annum*.

Page 408.

His Grace answered, the Lease was Legally Forfeited to him; That the Gentleman submitted, and he set a Fine of 1600 *l.* which was little more than a Year's Rent, the Parsonage being worth 1300 *l. per Annum*. And that he added the 60 *l. per Annum* Rent for a better Subsistence to the Curates of the Chappels of Ease; that he afterwards turned this Lease into a Lease for Lives again, without a Fine, and the Fine before mention'd was apply'd to the Repairs of *St. Paul's*; (what was paid of it, tho' there was a good part unpaid yet) That after this Business was settled, the Lord *Wimbleton* came and thank'd his Grace for preserving the Gentleman from Ruin, being his near Kinsman, and confess'd it was in his Grace's Power to have ruin'd him; but since his Grace had met with this Return, he cou'd not but wish he had insisted on his Right.

Then it was urg'd, he had illegally apply'd some Money out of some Administrations to the Repair of *St. Paul's*, but this appear'd to be legally done: And lastly, that he was an Instrument in selling the Mastership of the Rolls to Sir *Charles Caesar*, and this made up the Charge of Selling Places of Judicature; but after all their Attempts to prove it, they acknowledged there was only a Probability that his Grace was concern'd in it, and so dropt it. And his Grace aver'd, that all he had said in that matter when Sir *Charles* apply'd to him about it was, that as Things then stood, the Place was not like to go without more Money than any wise Man wou'd give for it.

His Grace was order'd to appear again the 4th of *April*, and had a Note from the Committee, that they intended to proceed then on the 5th and 6th

Original

Original Articles, and the 9th Additional Article, which see in the Articles before.

Thursday the 4th of April, 1644. His Grace was brought again to *Westminster*, and after he had waited some Hours without, and endured abundance of Scorn and Reproaches from the People, he was sent back again, the Lords being engag'd in other Business.

Page 409.
His Grace brought to the House and remanded without any thing done.

April the 8th, 1644. He was brought again, and us'd in the same manner, and his Grace aver'd, it cost him 6 or 7 l. every Day he appear'd.

Complains of the Charge he is put to.

April 16, 1644.

7th Day.

He was brought to the House again, and then Mr. *Nicholas* undertook the managing of the Evidence against his Grace.

The first Charge of this Day, was the making of Canons in Convocation after the Parliament was dissolv'd; and a Commitment of the Bishop of *Gloucester*, for refusing to subscribe them, and take the Oath enjoin'd by them; and for that his Grace interlin'd the original Canons with his own Hand; and that these Canons, by the Votes of both Houses, contain'd Matters contrary to the King's Prerogative, to the fundamental Laws of the Realm, the Rights of Parliament, to the Propriety and Liberty of the Subject, and Matters tending to Sedition, and of dangerous Consequence.

Charg'd with making Canons after the Dissolution of the Parliament.

His Grace answer'd, that the Convocation might Legally set after the Dissolution of the Parliament, for they were call'd by a different Writ from that which call'd them as Bishops to the Parliament; nor cou'd they rise, till His Majesty sent another Writ to discharge them; that it was not at the Desire of his Grace they continued sitting, for he had desired a Writ to dissolve them; but the Judges assured the King they might legally set, and he had their Opinions under their Hands for it.

The Convocation may set after the Dissolution of a Parliament.

That as to the Bishop of *Gloucester*'s being committed, for refusing the Oath, &c, It was done by an Order of Council, his Majesty being present, and so cou'd not be charged upon his Grace; and that the principal Obstacle to his subscribing, was the Canon made against the Growth of Popery — That the Interlineation in the Original Canons was

not

The Canons en-join several Oaths to be taken.

Page 410.

The Lords did not permit his Grace to shew that the Canons were agreeable to Law.

Charg'd with assuming Papal Power.

The Titles given him by the University of Oxford.

The Title of Holiness given to the Primitive Bishops.

Page 411.

not his Grace's Hand, and so that Charge was founded on a Mistake, but that his Hand was to it, as 'twas fit it shou'd; and that the Words were in the Ratification of the Canons, and ought to have been in the Original, however the Writer happened to leave them out. — That as to the Oath, the Canons in King *James's* Time had enjoin'd several Oaths, to be taken by Church-wardens and others, and yet, neither those Canons, nor those Oaths, had ever been declared illegal by any ensuing Parliament, or the Makers of them accus'd of any Crime, much less Treason. — Then his Grace wou'd have proceeded to show, that there was nothing in these Canons contrary to Law, &c. but their Lordships wou'd not suffer him to say a Word in Contradiction to the Votes of both Houses, but told him he was only to answer whether he made these Canons or no. — His Grace said he conceiv'd the House was as much concern'd in Honour, as he was in point of Safety, that no Charge shou'd be brought against him, which he shou'd not be suffered to make answer to; however, he hoped they wou'd not condemn him for that which he was not suffered to answer, adding, that these Canons being made in full Convocation, cou'd not be ascribed to him in particular, whatever Construction was put upon them.

Then they proceeded on the Article concerning his Grace's having assumed Papal Power; and first, some Letters that had been sent to his Grace, by the University of Oxford, were produc'd, to make good this Charge; in one of which, they give him the Title of *Sanctitas tua*, which *Nicholas* said was the Pope's own Title: Another Title was *Spiritu sancto effusissime plenus*; a third, *Summus Pontifex*; a fourth *Archangelus*, & *ne quid nimis*; and the last was, *Quo cerior non stat Regula*, &c.

His Grace answered, that the first Title was not appropriated to the Pope, but commonly given to other Bishops, both *Greek* and *Latin*, in the Primitive Church; that there was a twofold Holiness, the one Original, Absolute and Essential, which was in God only, and incommunicable to any Creature; the other derivative and relative, and that was to be found in the Creatures, or God cou'd

cou'd have no Saints ; for no Man cou'd be said to be *Sanctus, Holy*, but he who in some degree had *Sanctitatem, Holiness* residing in him. As to the second Title, his Grace had sent the University many hundreds of Books in divers Languages, and in allusion to the Gift of Tongues, it being also about the Feast of *Pentecost*, the University Orator ran upon these Phrases, which his Grace could not foresee or prevent : As to the third, he said *Summus Pontifex* was no unusual Stile to the Chief Prelate in any Nation ; but if it were amiss, the Bishop of *London*, who us'd it, must answer for it : As to the fourth, *Archangelus*, he confess'd he did not deserve the least of these Titles, but it shew'd he had deserv'd well of the University, or they had not bestow'd such on him ; that the last was an Hyperbole, and frequently found in Rhetorical Authors, and he cou'd not see how that shou'd amount to Blasphemy in a University Orator, that was accounted commendable in other Authors, especially since the Rule for the Interpretation of them was as well known as the Figure ; and if here he had omitted to answer every Instance that was produc'd, he thought however, that the Answers given to these might serve for the rest ; and added, that he thought it one thing to assume a Papal Title, and another to assume a Papal Power.

That whereas Sir Nathaniel Brett had attested he heard his Grace say, *He wou'd not so easily quit the Plenitude of his Power*, Sir Nathaniel confess'd he overheard this at a distance, and knew not what he was talking about ; and he might without Offence use such an Expression in relation to other Bishops of his Province, who have not so full a Power.

The next Charge was, That his Grace went about to exempt the Clergy from the Civil Magistrate ; that he had said, *The Clergy were now debased ; that heretofore it was otherwise, and he hop'd to see it so again.*

That he would exempt the Clergy from the Civil Power.

His Grace answer'd, if he had used the above-said Expression, it was no more than Truth ; and if he had mention'd any thing of an Exemption from the Civil Magistrate, which he did not think he did, he cou'd mean it only of an Exemption from Oppression, and not from Law. In maintenance of this

this Article it was also urg'd, that his Grace sent to Alderman *Rialton* by somebody, about submitting the Sword when he went into Church; and that he had said *the Church had been low for these 100 Years, but he hop'd it wou'd flourish again in another 100.*

His Grace answer'd this Business of the sending to the Lord Mayor was not prov'd, and if it was, that Princes submitted themselves in the Place, and at the Performance of God's Worship, but that Submission was not to any Foreign or Domestick Power, but only to God, and there cou'd be no great Hurt in submitting the Emblems of their Power where they submitted themselves; and if it were a Crime to hope to see the Church flourish, he recall'd that Hope, for it was a thing he cou'd not hope for at present.

Charg'd with
making Eccle-
siastical Persons
Justices of
Peace, &c.

Then he was charg'd with procuring the Archbishop of *York*, and his Chancellor, and some Residentiaries at *York*, nam'd in their Charter, to be Justices of Peace, as also the Bishop of the Diocess and his Chancellor at *Shrewsbury*, to be in Commission.

His Grace answer'd, that in the first Place, he did not think it any Crime, and then that the Witness only said there was an Order of Council for it, which did not affect him; and being charg'd also with procuring the Bishop of *London*, *Juxon*, to be Lord Treasurer, he answered, he cou'd see no Treason or Crime in all this, and that he aim'd at the Service of the King, and the Good of the Church in it.

The next Charge was, that he had caus'd one *Thorn* a Constable, and *Middleton*, to be fin'd in the High Commission, for their Rudeness to Mr. *Lewis* a Minister, and had said, *That no Man of their Rank shou'd meddle with Men in Holy Orders*; and that he had us'd the same Expression, when the Printers wou'd have turn'd out a Minister from being Corrector of the Press.

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His Grace answer'd, that the Censure of *Thorn*, &c. being the Act of the High Commission, did not affect him; that if he had us'd the abovesaid Expression, of which there was but one Witness, the censuring the Violence of a busy Constable, wou'd not maintain the Charge of exempting the
Clergy

Clergy from Civil Magistracy; and the Trust of the Press being refer'd to the High Commission, their refusing to permit the Printers to turn out a Corrector, wou'd as little admit of such a Construction.

They charg'd him also, that a Clergyman being tax'd to contribute as other Inhabitants of the Hundred, in Case of a Robbery, his Grace said, *That Ministers were free from such Taxes, and he hop'd to see the Times in which they might be free again.* Whether a Clergyman shall be tax'd to contribute, in Case of a Robbery.

He answer'd, that Clergymen not being liable to Watch and Ward, they could not by Law be made to contribute to this Tax, as he learnt from the Lord Keeper Coventry at the Council Table, and that therefore he might hope to see the Clergy exempted from it, without assuming a Papal Power.

The last Instance to make good this Charge was, the bringing Sir Richard Samuel into the High Commission, for doing his Office as Justice of Peace upon some Clergymen, and that one of the Articles against him was, his being an Enemy to the Clergy.

His Grace answer'd, that this was prov'd only by Sir Richard, who was Witness in his own Cause, nor did he say, that his Grace prefer'd the Articles, and by his own Relation, what was done, was by the High Commission, or Council Table, and so not chargeable on his Grace alone; neither did he remember what the other Articles against him were, but that it appear'd he did oppress the poor Clergymen his Neighbours, which was not a genteel part of a Man in Power.

The Business of the Day being ended, his Grace was order'd to appear again the 22d of April, which he did, but was dismiss'd without hearing then, as he was also the 25th, and 30th of April following, without any Consideration as to the great Expence he was at, by these frequent Attendances.

Saturday, May 4, 1644.

Eighth Day.

They proceeded again, and Nicholas, to render his Grace the more obnoxious, repeated the several Titles mentioned the preceding Day, which were given his Grace by the University of Oxford; and then went on to enforce the Charge as to his Grace's endea-

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endeavouring to exempt the Clergy from Civil Power; and as another Instance of this, one *John Stevens* depos'd, that his Grace said to the Council, as they were pleading in the Star Chamber, in *Mr. Shervil's* Case, that they shou'd take care not to cause the Laws of the Church and the Kingdom to clash one against the other.

His Grace answer'd, he still thought this no ill Advice, for that the Laws of the Church and State wou'd agree well enough, if some did not set them at odds.

Justices of the Peace call'd before the High Commission, for holding their Sessions in the Church-yard.

Page 415.

Another Instance was, that his Grace procured some Justices to be called before the High Commission, for keeping their Sessions in a Place at *Tewksbury*, adjoining to the Church, or rather part of it, which stood in the Church Yard.

To this his Grace replied, that there appeared no Proof of his procuring it, and if he had, it was such a Profanation as the Canons did not allow of; though Men in this Age were growing so bold with Churches, as if the Profanation of them were no Fault at all.

The next Instance was, that about 13 or 14 years ago, when his Grace was Bishop of *London*, he had caus'd two Church-wardens to be prosecuted in his Court, for executing a Warrant, made by *Sir Thomas Dacres* a Justice of Peace, against an Alehouse-keeper, for suffering Tipling in his House on the Sabbath Day.

His Grace answered, the Church-wardens were not called in question for it, but for that they did not complain to the Chancellor of the Diocess, and show the same Readiness to inform their Bishop, as to obey the Justice of Peace.

Another Instance was, That his Grace oppos'd private Marriages in the King's Free Chappel in the Tower, which us'd to be Celebrated there without Bans or Licence, which was attested by *Sir William Balfour* the Lieutenant.

His Grace answered, he did indeed oppose them, on Account of those who had been ruined by such Clandestine Marriages; but he could not be said to have offended herein, or assum'd a Papal Power, because he did it with the King's Concurrence.

Another

Another Instance to maintain this Charge was, That the Mayor of Oxford having set the Watch there, they were disturbed by the Proctors of the University, and a Constable imprisoned, and that his Grace refused to refer the Matter.

His Grace answered, that the Power of setting the Watch, was an ancient Privilege of the University; but being lately disputed by the Townsmen, the University applied themselves to his Grace as their Chancellor, who was determined to have the Matter brought to a Tryal at Law; but the Mayor and Aldermen desiring it might be referred to the Judge of the Circuit, he agreed to refer it; and afterwards when his Grace's Troubles came on, they refused to stand to the Award, and would have had another Reference; but his Grace was discouraged by their former Behaviour to concern himself in any more References.

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Another Instance was, that his Grace had a Purpose to abolish all Impropriations, and a Passage out of Bishop Montague's Book, found in his Grace's Study, was produced as an Evidence of this, and a Note in his Diary was insisted on, as a further Evidence of it; wherein he says, that when St. Paul's was finished, he would move his Majesty for the same Allowance, towards the buying in Impropriations, as he had allowed for those Repairs; and that he had actually procur'd all the Impropriations in Ireland, that were in the King's Power, for the Church in Ireland.

Charg'd with a Design of restoring Impropriations to the Church.

His Grace answer'd, That the Opinion of Bishop Montague, in the Book he had presented him, That Tythes were of Divine Right, did not shew that that was his Grace's Opinion. And for the rest, a Project for buying in Impropriations, or prevailing with his Majesty to give such as were in his Power to the Support of the Church of Ireland, and which were daily beg'd by private Persons; this was a Charge that his Grace did not think needed a Defence, any more than the next Instance, That he had projected to settle some fix'd Commendams on the smaller Bishopricks, out of some Things that were in their own Patronage, as out of Benefices *sine cura*, &c.

Page 417.
Charg'd with
adding several
exorbitant
Clauses to the
High-Commis-
sion.

Another Charge was, That his Grace had caus'd several illegal and exorbitant Clauses to be inserted in the High-Commission, when it was renew'd, which were not in the former Commission: And, *First*, That in this new Commission, a Power was given *in Locis exemptis & non exemptis*. *Secondly*, A Power to censure by Fine and Imprisonment. And *Thirdly*, A *Non obstante*, which was said to be against all Law. And *Fourthly*, That they had a greater Power than any other Court, it being both Temporal and Ecclesiastical.

His Grace, however, shew'd that these Clauses were in the former Commission; adding, That whatever Power that Court had, it was not assum'd, but given by his Majesty; and besides, their Power was not so great as other Courts, not extending either to Life or Limb, tho' it might be more various in some Respects; and tho' Mr. *Nicholas* was pleas'd to compare his Grace to Pope *Boniface VIII*, for that he took on him the Power of both Swords, tho' this was said *ad captandum populum*, the Case was widely different; for that the Pope claim'd them as originally due to him; and his Grace, and the other Commissioners, as under the Prince, and by vertue of his Authority.

The last Charge insisted on this Day, was, That he had illegally extorted a Patent from the King, for the Fines in the High-Commission, towards repairing *St. Paul's*, and thereby depriv'd his Majesty both of his Justice and Mercy.

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His Grace answer'd, That his Majesty's Piety was so forward in this Matter, that nothing need be extorted from him; and that this Endeavour of his Grace's to see *St. Paul's* repair'd, he should always look upon as honest and honourable; and that no Man had been able to charge him, in this strict Search, with a Penny of the Money being misapply'd. That his Majesty's Justice and Mercy were inseparable from him, and therefore he could not deprive him of them; and if the Words of the Patent had extended so far, they would have been void in Law, since 'twas granted they were inseparable. That the Patent was drawn by the Lord-Keeper *Coventry*, Mr. *Noy*, and Sir *Henry Martin*,
and

and if any thing was deem'd illegal in it, it could not be imputed to him, who took such Care to have it unexceptionable; and he did not see what Security a Man could have, who enter'd on any publick Work in this Kingdom, if such Council could not be trusted for drawing up his Warrant.

The Business of the Day being over, his Grace mov'd for some Allowance towards the Charges he was at in his Attendances when he was not heard. Their Lordships directed him to petition them, and sent the Petition to the Commons; but it was said it would be time enough to consider that when they saw what would become of him. His Grace was order'd to attend again the Ninth, but that was put off to *May* the 13th, when he attended again only to endure the utmost Scorn and Contempt that could be shewn him by the Mob, and was dismiss'd unheard, and order'd to be brought again the 16th of *May*.

His Grace petitions for an Allowance out of his Estate, but deny'd.

May 16, 1644.

Ninth Day.

The first Charge this Day, was, That his Grace prevented Mr. *Lee*, the Town-Clerk of *Shrewsbury*, having the Reversion of that Place granted him in the Town-Charter — His Grace answer'd to this, That the Matter being refer'd to him, and some other Lords, they might lawfully give such Reasons against it as weigh'd with them; and if his Majesty was mov'd by them to alter his Opinion, there was no occasion to charge his Grace from thence as tho' he assum'd Regal Power.

Another Charge was, That Sir *John Lamb* presented a blind Man to a Living of Sir *Arthur Haslerigg's*; and that this Living was an Impropriation, and so a Lay-Fee, and that when Sir *Arthur* acquainted his Grace with it; he answer'd, if he liv'd no Man should stand upon his Lay-Fee.

His Grace answer'd, That he believ'd the Living to be Presentative, and no Lay-Fee, and he aver'd he very well remembered his Expression to be, That no Man should make a Presentative-Benefice a Lay-Fee.

A third Charge was, That his Grace refus'd to allow a Pardon, which Mrs. *Burton* produc'd to the

High-Commission-Court, about ten Years since; and said it should not serve his Turn, and he would move his Majesty about it.

His Grace answer'd, This could not be interpreted an assuming any Power by the High-Commission or himself, to say his Majesty should be mov'd in it.

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Another Offence was, That he stop'd the Proclamation being printed for a Pacification with the Scots.

He answer'd, This was done by Order of Council; however, as to this, the Act of Oblivion obliterated the Offence, if it was one.

Then was mention'd the Censure and Deprivation of one *Fautrye* illegally, by the High-Commission, for Simony; and it was said that the High-Commission could put no Man from his Freehold.

His Grace answer'd, That *Fautrye* was not censur'd for the Original Cause of Simony, but for an Intruder and Collusion with one *James*, to abuse the King's Grant of the Benefice: And that the High-Commission had Power to deprive, for the Statute of 1 *Eliz.* c. 1. sect. 8. impowers them to use all Ecclesiastical and Spiritual Censures, of which Deprivation is one; and the First of *Eliz.* c. 2. gives them express Power to deprive some Offenders of all their Spiritual Promotions; and, consequently, they have a Power over Freehold, if a Benefice is to be accounted such.

Charg'd with
altering the
Statutes of the
University of
Oxford.

The next Thing *Nicholas* urg'd against him, was, The Alteration of the Statutes of the University of *Oxford*, in which, and the Cathedrals of new Erection, he said his Grace had taken upon him to be a universal Law-giver: He said, by these new Statutes his Grace had taken upon him to make new Oaths for the University; enjoin'd Men to obey the Proctors in singing the Litany; establish'd the Statute of *Bannitron* from the University; enacted that nothing should be propos'd in Convocation, but what was consented to by the Heads of Colleges first; and some Things he had refer'd to arbitrary Penalties; that the Statute against Conventicles was too strick, and that of discommuning unlawful;

unlawful; that the Students were to be imprison'd by the Command of the Vice-Chancellor or Proctors. And *Lastly*, Graces were to be staid till the Party had a Testimonial from the Bishop of the Diocess.

His Grace answer'd, That the Statutes of the University lay in a miserable Confusion; and it was their great Necessity that put him upon this Work: That the Difficulties were so great, that they were often forc'd to have recourse to a Convocation, to make new Statutes upon sudden Emergences, which sometimes prov'd opposite to the Old, and Men were sworn to both — Besides, That he did not abolish the old Books, in which the Statutes lay in that Confusion, but left them entirely in the University, to use any of them they should afterwards think for their Purpose: Neither did he do any thing in this Work, but by Consent of the University, and in pursuance of an Act of their own Convocation: And, in his own Judgment, if he had done any thing that deserv'd Thanks from the Publick, it was in this Particular: And as to those Statutes which had been instanc'd in, as illegal Innovations, there was not one of them but what had been put in practice and approv'd before his Time; And that to these Statutes thus drawn up, by some of their own Body, he obtain'd his Majesty's Broad-Seal for a Confirmation, and therefore no one Thing in them was done by any Papal Power he had assum'd, as had been urg'd, but by the King's Power only — And whereas it was made an Aggravation of this Charge, that he had procur'd himself to be chosen Chancellor of the University, he said he was so far from it, that he had labour'd for another, and entreated his Majesty he might refuse it, foreseeing the Envy that was like to follow him upon it.

Then he was charg'd with acting illegally, in making new Statutes for some Cathedral Churches. And particularly, he had order'd that nothing should be done in these Statutes without advising with him; and that he had made one Statute against the letting Leases for three Lives or 21 Years.

His Grace answer'd, That what he had done was by vertue of the King's Letters Patents; and that these Cathedrals had great need of Statutes, for all lay loose for want of Confirmation, and Men did what they pleas'd. And that there was great Reason he should be consulted before any Statute pass'd, because his Majesty had entrusted his Grace principally in this Matter, and if any Complaint was made, would expect an Account from him. And as to the Statute against letting Leases for three Lives, it only took place where the antient local Statutes of the Church were against that Practice.

Then his Injunctions in the Visitation of *Winton* and *Sarum* were complain'd of, which were made for the pulling down some Houses that were built upon consecrated Ground.

His Grace answer'd, That these Houses were new Erections, and they were not to be demolish'd, till the Terms of the respective Tenants were expir'd; and that this Demolition was to be made *juxta Decreta Regni*, according to the Statutes of the Kingdom; and therefore if any thing was enjoin'd contrary to Law, the Injunction did not take Place.

The next Thing he was charg'd with, was, an Intention to visit the two Universities, which was said to be contrary to Law.

His Grace answer'd, That his Troubles then beginning he did not visit them, but that it would not have been unlawful if he had, he having the King's Warrant for it; and that the King's Power of Visitation was saved in that Warrant; and it did also appear, that three of his Predecessors did actually visit the Universities, and that *Jure Ecclesiae suae Metropolitanae*: That, indeed, Cardinal Poole's Visitation, by vertue of his Legative Power from the Pope, was expressly against the University Charters; but that this ought not to be charg'd upon his Grace, who challeng'd no such Power.

His next Charge was, for being too severe against Sir Nathaniel Brent, the Warden of *Merton* College, in his Grace's Visitation of that College, and Sir Nathaniel himself was the Witness.

His

His Grace being about to shew that Sir Nathaniel de-
serv'd severer Usage, and that he might justly have
been turn'd out; Mr. *Nicholas* said they would not
suffer their Witnesses to be scandaliz'd (for in this,
as in other Cases, People who were Parties were
suffer'd to give Evidence for themselves.)

The next Charge was for censuring Dr. *Bastwick*
for a Book he wrote against Bishops; That his
Grace had said Christian Bishops were before
Christian Kings: That he apply'd those Words in
the 45th Psalm, *Whom thou mayest make Princes in all
Lands*, to the Bishops: That he had said, No Bishop,
no King: That he had said *he receiv'd his Juris-*
diction from Christ, contrary to Act of Parliament.
And Lastly, That *Bastwick* was confin'd close Pri-
soner. The Witnesses to this were *Burton*, Mrs.
Bastwick (who had all her Evidence drawn up in
writing for her) and *Hunscot* the Printer, who had
been censur'd for the Errors he had committed in
the printing the Bible and Common-Prayer-Book,
which were not less than a Thousand; one of the
most notorious was in the Seventh Commandment,
viz. Thou shalt commit Adultery.

Charg'd with
censuring *Bast-*
wick for writing
against Bishops.
Page 422.

To this his Grace answer'd, That Mr. *Bastwick*
was censur'd by the High-Commission; and that
Offenders were not confin'd to their Rooms by
them, but allow'd the Liberty of the Prison.
That no Body doubted but Christian Bishops were
before Christian Kings. That he had the Opi-
nion of many of the Fathers to justify his Interpre-
tation of the Place mention'd in the *Psalms*. That
no Bishop, no King, was an Expression of King
James's. And that as to his Jurisdiction, the Act
of Parliament spoke only of their Jurisdiction in
Foro contentioso, and Places of Judicature, which he,
and all the Bishops of *England*, acknowledg'd they
deriv'd from the Crown; and the Canon they had
subscrib'd was plain in it; but his Order, his
Calling and Jurisdiction in *Foro Conscientiæ*, that was
from God and from Christ, and by Divine and
Apostolical Right; tho' he admitted, that even the
Use and Exercise of this Jurisdiction in *Foro Con-*
scientiæ might not be but by the Leave and Power
of the King within whose Dominions they were.

Bishops derive
their Power, in
Temporals,
from the Prince;
but, in Matters
purely Spiritual,
from Christ.

But may not
exercise the
Spiritual Power
without Leave
of the Prince.

On *Friday* the 17th of *May*, his Grace receiv'd a Note from the Committee, that they intended to proceed next upon the remaining Part of the Sixth Original Article, and upon the Seventh.

Tenth Day.

Monday, May 20, 1644.

Charg'd with altering the Communion-Table, and putting up painted Glass in his Chapel.

Mr. Serjeant *Wilde* undertook to manage the Evidence against his Grace. And the first Instance he produc'd, to show that his Grace had traiterously endeavour'd to alter and subvert God's true Religion, was some Alterations his Grace had made in his Chappel at *Lambeth*; and particularly, that he had turn'd the Table North and South, and that he had repair'd the Windows with colour'd Glass, after the Pattern of the Pictures in the Mass-Book, contrary to the Statute of *Edward VI*, which require the Destruction of Images, as well in Windows as elsewhere, as did the Homilies which the Clergy subscrib'd to, and these were confirm'd by the Articles, and the Articles by Act of Parliament.

His Grace answer'd, That he had made some Alterations in the Chappel, or it must have lain in a very undecent manner; and that he had set the Table North and South, according to Queen *Elizabeth's* Injunction, and they were guilty of Innovation who set it otherwise; and tho' that Injunction said, the Place of standing should be alter'd when the Communion was administred, the Reason given for it was, that the Minister might be the better heard, when the Number of the Communicants was great; which could not be extended to his Chappel, where the Number was not great, and all might easily hear. And besides, he was not charg'd that he did not remove it at the Time of the Communion — That it was true, the Windows being miserably patch'd, he did, by the Assistance of his Secretary, discover the Story by what remain'd, and got them repair'd, but not by the Missal, as was suggested; nor did he believe that Story was in the Missal; and that those Windows did contain the whole Story from the Creation to the Day of Judgment; And that even *Calvin* was of Opinion, that Images might be of use to instruct the People. That the Statute of *Edward VI* was mistaken,

taken, there being nothing in it concerning the Figures in the Windows; and that the Practice of those Times best expounded the Statute, and both then, and in Queen Elizabeth's Time, such Paintings were allow'd. That they subscrib'd the Homilies, as containing godly and wholesome Doctrine indeed, but as *necessary, in this Particular*, only for those Times, when the People were newly wean'd from the Worship of Images.

The next Instance was, The Bowings at the coming into the Chappel, and going up to the Altar. Bowling towards the Altar.

His Grace answer'd, This was usual in Queen Elizabeth's Time, and of old among the Jews, as appear'd in the Story of Hezekiah, 2 Chron. 29. 28, 29. and among Christians, as was evident in Rhenanus's Notes upon Tertullian: And if he must bow to Men in either House of Parliament, must he not bow and worship God in his own House, tho' there were neither Altar or Communion-Table in it?

Then the Organs, Candlesticks, and a Piece of History at the Back of the Altar was brought in to maintain this Charge; and the wearing of Copes at Communions and Consecrations. Organs, Candlesticks, &c.

His Grace answer'd, All these Things had been in use ever since the Reformation, and it was admitted the same were us'd at Whitehall; and it was not to be suppos'd Queen Elizabeth or King James would have suffer'd them in their Chappel, if they had look'd upon them as Introductions to Popery. Page 424.

Another Instance was, His consecrating the Plate for the Communion-Table, and therein using part of Solomon's Prayer at the Dedication of the Temple; and, in his Prayer, desiring God to accept those Vessels; and that this was according to the Form in the little Missal. Consecrating of Communion-Plate.

His Grace answer'd, That in all Ages of the Church, especially since Constantine's Time, that the Christian Religion hath had publick Allowance, there have been Consecrations of sacred Vessels, as well as Churches; that in St. Matthew 'tis said the Altar sanctifies the Gift, which it could not do if itself were not holy; and if there be no Dedication of these Things to God, no Separation of them from

from common Use, then neither Thing nor Place are Holy; and then there can be no Sacrilege, and there is no difference between a Church and a common House, between holy Tables, as the Injunction calls them, and ordinary Tables; that St. Paul's Question puts it home, if they would consider it, *Thou which abhorrest Idols, dost thou commit Sacrilege?* Thou which abhorrest Idols to the very defaming of Church Windows, dost thou, thou of all other commit Sacrilege, which the very Worshipers of Idols punish'd? And that this Prayer of Dedication was not taken from the Missal, as was suggested, but from one that was us'd by the Reverend Dr. Andrews, late Bishop of Winchester, which his Grace had by him.

His Bible with
the five Wounds
of our Saviour.

Prayers at ca-
nonical Hours.

They proceeded from the Chappel to his Grace's Study, where was found a Bible with the five Wounds of our Saviour wrought upon the Cover of it in Needle-work, a Missal, and other Books relating to the Popish Liturgy, and his private Prayer-Book was produc'd against him; and the Popery in it was, that the Times appointed for Prayers were at canonical Hours, *Hora sexta, Hora nona, &c.* And a Prayer was found that was us'd at the Consecration of *HammerSmith* Chappel; and the Word *Prostratus* was found in his private Devotions before the Sacrament.

His Grace answer'd, The Bible was presented him by a Protestant Lady, and he never suffer'd it to be seen out of his Study by any to whom it might give Offence. That he had, indeed, a Missal, and other Popish Books in his Study, but more of the *Greek* Liturgies than the *Roman*; and he could not tell how they should answer their Errors if they might not have them: That he had also the Alcoran in divers Copies, and they might, by the same Rule, charge him with being a *Mahometan*. That as to their exposing his private Prayers, he thought it was not to be parallel'd in Heathenism; and if he had enjoin'd himself his Prayers at canonical Hours, he hop'd there was no Sin in it; and desir'd his Prayer at the Consecration of the Chappel at *HammerSmith* might be read, and no Offence could be found in it; that if he us'd the Word

Word *Prostratus* to God, what was that to any Man? And if he were so addicted to Popery, as they wou'd have him, it was strange Mr. *Prynn* had found no Prayers to the blessed Virgin and the Saints.

The next Instance was, the Pictures in the Gallery. In one of them, which was a Picture of four of the Fathers, there was a Dove, which they would have it stood for the Holy Ghost; another was the *Ecce Homo*, when *Pilate* brought Christ forth.

Pictures in his Gallery.

His Grace answered, as to the Dove standing for the Holy Ghost, it was more than the Witness cou'd depose; and both as to that, and the *Ecce Homo*, he answered out of *Calvin*, that it was lawful to make a Picture of any thing that might be seen; that the Dove was visible, and when *Pilate* said *Ecce*, it was that the Jews might see him: And whereas it was said, that every Picture of Christ was a Lie, because whole Christ cou'd not be pictured, by the same Argument it was unlawful to make the Picture of a Man, for the whole Man cannot be pictured. Never any one pretended to draw a Picture of the Soul, and the *Ecce Homo* is no more than a Picture of the Humanity of Christ, and may as lawfully be drawn, as that of any other Man. The third Picture related to what our Saviour says of the true Shepherds entring in at the Door, &c. and there the Pope and the Friars are made climbing in at the Windows; and how this introduc'd Popery he could not conceive; and adds, that this, and the *Ecce Homo*, hung in the Gallery 40 Years before his Time.

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N. B. All these Pictures were plac'd in the Gallery by Cardinal Poole, when he built it, and were not defac'd during the Rebellion by the Godly Party, as the Windows of the Chappel were, and the Chappel itself converted into a Dancing Room, they having first beat down Archbishop Parker's Tomb in the middle of it, and thrown his Bones upon the Dunghil.

Then it was urg'd, that Bowings were never us'd at the Chappel at *Whitehall* before his Grace's Time, and that his Grace had caused a fine piece of Hanging, with a Crucifix in it, to be hung up behind the Altar there, in Passion Week, which gave great Scandal, and this Sir Henry Mildmay attested.

A piece of Tapestry with a Crucifix wrought in it, hung up for an Altar-piece.

His

His Grace added to what he had said before of Bowings ; he was sorry any Reverence in God's House should be thought too much ; but 'twas the Devil's Cunning, when he saw Superstition thrown out of the Church, to bring in Irreverence and Prophaneness : And that Sir *H. Mildmay* might remember if ever he had seen the King offer before his Time, or the Lord Chamberlain attend him, it was never done without bowing. As to the Crucifix in the Hanging, there had been one in the old Hanging for 30 Years before, which gave no Offence ; and that Sir *Henry* came often to *Lambeth*, and made great Professions of Kindness to his Grace, and yet never intimated that his own, or any other Man's Conscience was troubled about it ; and that Sir *Henry* could not possibly think he intended any Popery in it, having told his Grace, when he came from *Rome*, he observ'd he was more hated there, than any of his Predecessors.

His Grace is allowed 200 l. out of his Rents.

Here a Message coming from the House of Commons, his Grace was ordered to withdraw, and being ordered to attend another day, and dismiss'd without any thing done, he at length had an Order sent him by the Committee of Sequestrations, to receive 200 l. out of his Estate, which was all he receiv'd out of it in the two Years it was under Sequestration.

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Monday May 27, 1644.

Eleventh day.

The Pictures in the Windows of *Lambeth Chappel*.

They went upon the Windows of *Lambeth Chappel* again ; and one *Pember* a *Glasier* deposed, that on the North side was the Picture of an old Man, with a Glory about his Head, which he took to stand for God the Father. Mr. *Brown* the next Witness said, there was no Picture of God the Father in *Lambeth*, but there had been one at *Croydon*, with Archbishop *Cranmer's* Arms under it ; but when he was entrusted by his Grace to survey the Windows of both, he took it down. And *Prynn* depos'd, that his Grace had a Book of Pictures concerning the Life of Christ in his Study.

His Grace answer'd, that as to an old Man with a Glory, that was usually about the Saints ; and Mr. *Brown* had not only acquitted him of that, but shewn that a Picture of God the Father was taken down

down at Croydon in his time, though it stood there in Cranmer's. And for the Pictures in the Book, it was necessary he should have them, for there are some things to be discovered in the Pictures the Papists allow the People, which their Writings did not, or perhaps dare not avow. Then they charg'd his Grace, that the Sacrament was administred in his Chappel in a manner they did not like; but he answered, it was as it had been in the time of Bishop Andrews, and of some other Bishops.

Then he was charg'd with the Ceremonies of the Coronation, some of which were said to border on Superstition, and his Grace then assisted as Dean of Westminster. And first they prov'd from his Diary, that he carried back the Regalia, and offered them on the Altar, and then laid them up in their Place: This he said the Prebendaries assured him was the Custom. Then they found fault that the Unction was *in forma Crucis*. This he said, if it was a Fault, was perform'd by his Predecessor. Then they said, there was a Crucifix among the Regalia. This he said he did not remember; but if his Predecessor, who officiated, approv'd it, he did not think it fit for him to quarrel with him about it. [Heylin says, in his *Life of Laud*, that an old Crucifix being found among the Regalia, was placed on the Altar.] It was added, that one of the Prayers was taken out of the Pontifical. He said if it was, it was not taken from thence by him; that it was the same that was us'd at King James's Coronation, and if the Prayer were a good one, no matter from whence it was taken.

The Ceremonies at the Coronation charg'd with Superstition.

But the great Objection was, that he had alter'd the Coronation Oath.

Charg'd with altering the Coronation Oath.

His Grace answered, that if an Alteration was made, it was not made by him, and that his Predecessor administred the Oath, and not he; That there was a Committee of several great Lords, as well as Bishops, to adjust all matters before the Coronation, and it could not be supposed they would suffer him to alter the Oath. — But at length he procured the Book in which King James's Coronation Oath was, and upon comparing them, they were the same to a Tittle.

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After this, they proceeded to shew the Popery and Superstition that was to be found in Oxford, and Oxford.

The Virgin Mary's Picture at St. Mary's in Oxford.

and there was discovered a Picture of the Blessed Virgin at St. Mary's Door.

His Grace said, he did not know any thing of it till it was done, and he had not heard of any abuse or dislike of it since it was done.

Page 430.

Then the Business of Copes, Bowings, Pictures, Candlesticks, placing the Communion-Table, and such Things in the Universities, and in Cathedral and Parish Churches, were all laid to his Charge again, which having receiv'd Answers before, need not be repeated here.

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Thursday, June 6, 1644.

Twelfth day.

A Window of Painted Glass, set up in the new Chappel at *Westminster*, in which was the History of the Descent of the Holy Ghost, was laid to his Grace's Charge; but it appeared Dr. *Nevil* gave Orders for this Window; and if it had been found to have been done by his Grace's Order, he said he saw nothing amiss in the Window.

Then the Picture of the Blessed Virgin at St. Mary's in *Oxon* was charg'd upon him again; and Alderman *Nixon*, an old Enemy to his Grace, said, that some Passengers put off their Hats, and he suppos'd it was to the Picture, and that he saw a Man in the Church Porch upon his Knees, he thought praying, but he cou'd not say to what; and he thought his Grace countenanced the setting of it up; but Mr. *Bromfield*, who did the Work, acquitted his Grace of it before the Lords.

Page 432.
Dr. Brown's
kneeling before
the Altar.

Then 'twas said, that two Popish Priests being in the Chappel at *Whitehall*, and seeing Dr. *Brown*, one of the King's Chaplains, bow to the Altar, and then kneel down before it to his Prayers, they said, that sure we did not differ much, and shou'd be of one Religion shortly.

His Grace answered, this did no way relate to him, and supposing it true, we were never a-whit the nearer them in Religion. Indeed, if the difference consisted only in outward Reverence, some Arguments might be drawn from it; but the Points of Doctrine between us were many and great, and 'twas possible their Priests might endeavour to discountenance all publick Worship among us, that so they might make the more Profelites.

Then

Then several Sentences in the High Commission (which they term'd cruel) were charg'd upon his Grace, and particularly against Mr. *Workman* of *Gloucester*, for Preaching a Sermon against Images, (as they said) And when he was put from his Lecture, he was not suffer'd to teach School, or practise Physick in the Place.

Workman of *Gloucester* censur'd for his Sermon about Images.

His Grace answered, he was not censur'd for Preaching against Images, but for other Things; and he might have taught School, or practis'd Physick any where else; but he had done so much harm, and made such a Faction in *Gloucester*, that the High Commission did not think fit he shou'd continue there. The Sentence of the High Commission being read in Court, it appear'd, that among other Things *Workman* was censur'd for, these were some: He affirm'd, that Drunkards, so they were conformable, were prefer'd; that the Election of Ministers was in the People; and in his Prayer before Sermon, he prayed for the States and the King of *Sweden* before his Majesty, which was usual among the Faction in those Times; and to Preach against the Government of the Church, was *Workman's* constant Theme.

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The States and the King of *Sweden* prayed for before his Majesty.

The next Charge was a Sentence which had pass'd in the Star-Chamber against one Mr. *Sherfield*, for defacing a Church Window in or near *Salisbury*, in which he thought was the Picture of God the Father; and the Witnesses said, that his Grace, in the hearing of the Cause, justified the having this Picture of God the Father from a Place in Scripture.

Page 434.
Sherfield censured for defacing a Church Window.

His Grace answered, that they had his Speech made at that time among his Papers, which, if produc'd, wou'd shew the Falshood of this; and that he never justified either the having, or making such a Picture; but if such a Picture were there, it ought to be complain'd of to Authority, and not pull'd down by a private Hand: That by Mr. *Sherfield's* Description, it was very unlikely to be the Picture of God the Father, for he told the Lords it was the Picture of an old Man, with a Budget by his Side, out of which he was pulling *Adam* and *Eve*; and Lastly, that it was the Sentence of Court of Star Chamber, and not his.

As

A Bible printed
with Pictures.

As another Instance of his Grace's Intentions to bring in Popery, a Bible full of Pictures was produc'd, in which was a Picture of the Assumption and the Dove, which gave great Offence.

His Grace answered, that this Bible was licens'd by Dr. *Weeks*, who was Chaplain to the Bishop of *London* when he licens'd it, though indeed he was his Chaplain formerly when he was Bishop of *Bath and Wells*; That the first he saw of them was in a Lady's Hand in the King's Chappel, after many of them were vended; and soon after he sent for one and acquainted the Lords of the Council with it, and desired their Direction; and they ordered that it should not be sold openly in Shops, but that the Booksellers might sell it to Men of Learning and Discretion; that his Grace labour'd to have a stricter Order, but cou'd not prevail, and after all, that Pictures in themselves are things indifferent, not simply good or bad, but as they are us'd, and therefore these Bibles were prohibited to common Customers. His Grace also observ'd, that these Bibles were first Printed at *Amsterdam*, where they were not so strict against these Pictures, and that the Bibles in the beginning of the Queen's time were full of Pictures, and no Fault found with them.

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Expunging Passages against Popery out of Books.

The last Instance produc'd this Day was, that Dr. *Brag*, one of his Grace's Chaplains, wou'd not license Dr. *Featley's* Sermons, till a Passage concerning Images was struck out.

His Grace answered, he trusted the Care of the Press to his Chaplains, as his Predecessors did, and whether such a Place was expung'd he knew not; but there were Passages as full against Images and Popery in Dr. *Featley's* Sermons still, as any that could be struck out; where he terms the Papists Idolaters, and that as gross as the Baalists; and that the Pope is Antichrist, nay, that he is the very Whore of *Babylon*, &c.

Here his Grace complain'd of the Diurnal, and some other Pamphleteers that abused him, and wou'd make the World believe, that the whole Charge had been prov'd against him: But he cou'd find no Redress.

Whitson

Whitsun-Tuesday June 11, 1644.

Thirteenth Day

Sir Henry Mildmay and Mr. Anthony Mildmay came and depos'd, that there were two Factions in Rome, and one of them hated his Grace, and the other loved him; and one Mr. Challoner said, that his Grace was an obscure Man till within these 15 Years, and ever since there had been a strong Opinion of a Reconciliation with Rome, and that some of the Papists commended his Grace, and thought him a good Catholick, &c.

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His Grace answered, that this same Sir Henry Mildmay had formerly declared before several, that his Grace was the most hated at Rome of any that sat in his See since the Reformation, and mentioned nothing of two Factions then; but indeed his Grace very much questioned, whether he had ever been at Rome. That as for his being an obscure Person till within these 15 Years, he had been a Bishop 23 Years, and 'twas 18 Years since he was made Dean of his Majesty's Chappel; that if an Enemy's giving him a Character (who might do it maliciously or ignorantly) was sufficient ground for a Charge of this Nature, it might lie in the Power of two or three Jesuits, to destroy any Bishop in England.

The next piece of Popery charg'd upon his Grace was, the Consecration of the two Churches of St. Katherine Creechurch, and St. Giles's in the Fields. The Witnesses deposed, that he came in a pompous manner to perform the Ceremony, and at his Approach to the Church Door was read this Sentence, *Lift up your Heads O ye Gates, and be ye lift up, ye everlasting Doors, and the King of Glory shall come in.* That he kneeled down at his coming in, and us'd many Bowings and Cringings afterwards; that at the beginning of the Ceremony he threw Dust in the Air, and us'd divers Curses, according to the Pontifical, and that at last he pronounc'd the Place holy; a Prayer also was us'd, which was in the Pontifical. And 'twas urg'd, that his Predecessor Archbishop Parker was against Consecrations, and that his Grace sought, by these Ceremonies, to overthrow the Religion established.

Charg'd with
Consecrating
Churches.

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His Grace answered, as to the Pomp of the matter, he was only attended by Sir Henry

*Martin, Dr. Duck, and others of the Archies, who usually attended their Diocesan ; that as to the Place, Lift up your Heads, &c. that the King of Glory may come in ; though they repeated it often in Derision, as though he had applied it to his own Person, it was a Passage antiently us'd at Consecrations, and related to God Almighty the true King of Glory, who at the Dedication took Possession of the Place by his Servant the Bishop : And that as to his kneeling down and bowing, he look'd upon it as his Duty, let them call it what they would ; That there was no throwing of Dust in the Air, or Curses us'd ; and though both the Witnesses attested it, one of them acknowledged he was not there at the beginning, and the other deposed that this was done at the beginning, so that their Testimony was inconsistent ; that he did not follow the Pontifical, but a Copy left by Bishop *Andrews*, which he had ready to produce. As to one of the Prayers being like one in the Pontifical, there were several in the Missal, which were the same with our Collects, which were confirm'd by Law, and if they had separated the Chaff, they ought not to throw away the good Grain too : That his Predecessor did not find Fault with Consecrations, but with the superstitious Ceremonies used therein by the Papists ; and his Grace only wish'd that the true Religion might remain till it was overthrown by the Consecration of Churches. And whereas it was added to this Charge, that some Fees were taken at the Consecration ; his Grace answered, that what was said to belong to him, he immediately distributed to the Poor of the Parish, as his Secretary attested, and if his Officers exacted any thing more than their due, they were answerable for it.*

Then Mr. *Nicholas* charg'd him with the Consecration of Chappels too, and in this he said he had outgone Popery itself ; that he had given the name of *St. John's* to his own Chappel of *Aberguilly*, when he was Bishop of *St. David's*, and consecrated that Chappel. Then they read a Paper which they avow'd to be a List of his Chappel Furniture, and Wafers were therein mention'd to be us'd instead of Bread.

His Grace answered, there was the same Reason for the Consecrations of Chappels as Churches,

and it was us'd long before the times of Popery ; that he did indeed, at the Dedication of his Chapel, give it the name of *St. John the Baptist*, being the name of the College where he was bred, but it was dedicated to the Service of God ; and to give the names of Angels or Saints to Churches for distinction sake, and in Honour of their Memory, was very ancient and usual in the Church, as appear'd in *St. Austin*, and divers others of the Fathers : And the Paper that had been read as his, appear'd to be the Model of Bishop *Andrews's* Chapel, and nothing of it in his Grace's Hand, but the Indorsement, tho' *Prynn* had made Oath, it was a Paper of his Grace's Chappel Furniture at *Aberguilly* ; and for Wafers, his Grace aver'd he never gave or receiv'd the Communion but in common Bread, tho' they were sometimes us'd at *Westminster*, as Things indifferent.

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The next Charge was the publishing the Book of Recreations.

Charg'd with publishing the Book of Sports.

His Grace answered, that the King commanded the printing of it, as was therein attested ; that he was always for keeping the Day holy, but free from a Superstitious Holiness ; that only Lawful Recreations were allowed by it, and those not till Evening Service was done, and then only to such as had been at both ; and that if some Recreations were not Lawful after Divine Service, why was it the Practice of *Geneva*, where the Elder Men went to Bowls, and the Younger exercised their Arms ? And *Calvin* says in expresse Terms, that one Reason of instituting the Sabbath was, That Servants might have a Day of Rest, and Remission from their Labour. And what manner of Rest was that, where able young Men might use no Recreation ?

The People allow'd their Recreations on Sundays at Geneva.

Here 'twas added, that his Grace had called for an Account of the reading this Book at his Visitations, both of the Province, and his own Diocese ; and that three Ministers in his own Diocese had been punish'd for not reading it, particularly one *Culmer*, who now appear'd as a Witness against his Grace.

Ministers punished for not reading the Book of Sports

His Grace answered, that it was his Majesty's Command he should enquire after it, and that when any apply'd to him for further time, they had it,

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till he found they were determin'd not to comply, and then they were suspended *ab Officio* only; and if any had their Livings sequestred, it was by the High Commission, and upon other Accounts, as was the Case of Mr. *Wilson* one of the Witnesses, whose Living was sequestred, on Account of Dilapidations: That *Culmer*, the other Witness, instead of doing Reverence to the Church, piss'd in the Body of the Cathedral at *Canterbury* at Noon-day. [*And was one who afterwards demolished the noble Glass Windows there with his own Hands.*] And this Witness himself had once inform'd against a Gentleman for speaking against the Book of Sports, and was laid by the Heels for his false Information, so that there could be no great matter of Conscience in his refusing to read the Book. — Lastly, *Calvin* himself, in his Institutes, had said, *That those Men who stand so strictly for the Morality of the Sabbath, do by a gross and carnal Sabbatization thrice outgo the Superstition of the Jews.*

Mr. *Prynn* brought over again the Case of himself and Mr. *Burton* in the Star-Chamber, adding, they were not admitted to make their Defence in the manner they had agreed on.

His Grace answered, there was an Order of the Court, that the two Chief Justices should peruse their Answer, and expunge the scandalous matter it contain'd, which they did; and if his Grace did concern himself in this Matter, it was no more than he ought, for the whole Church of *England* were scandaliz'd by it as well as himself.

Charg'd with introducing Arbitrary Power.

The last Charge of this Day, was a Passage in a Speech of his Grace's in the Star-Chamber, viz. *That one Way of Government is not always either fit or safe, when the Humours of the People are in a continual Change; from whence they infer'd, that he labour'd to reduce all to an Arbitrary Government.*

His Grace answered, the Words could bear no such Construction, and all he meant by it was, that sometimes the Reins of Government were to be held strictly, and at others they might be more remis.

At the Conclusion of this Day, his Grace receiv'd a Note, that they would proceed upon the Remainder of the 7th, and the 8th, and the 9th Original Articles next.

Monday,

Monday, June 17, 1644.

Fourteenth Day.

He was charg'd with being the occasion of Mr. Dampart's leaving his Benefice in London, and going to Holland; and that when his Grace heard he was gone to New-England, he said his Arm shou'd reach him there.

Causing Ministers to leave their Cures, and fly beyond Sea, &c.

His Grace answer'd, that it appear'd by the Evidence, that he went away upon a Summons from the High Commission; and that it was not fit the Plantations should protect Offenders: That his Grace had prevented a Prosecution against him once before, but he was not always bound to do it; and it appear'd he had been obnoxious, and under Prosecution in the time of his Predecessor, Archbishop Abbot, and that he was a dangerous, factious Man.

The next Charge was, that one Nathaniel Wickens was imprison'd nine Weeks, only for being Servant to Mr. Prynne, and that upon his refusing to take the Oath *ex Officio*, his Grace said, the Charge shou'd be taken *pro Confesso*, and that his Friends were refused a Sight of the Articles against him.

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His Grace answered, that it appeared *apud Acta*, that there were many Articles of great Misdemeanour against him, and by their own Evidence he refus'd the Oath *ex Officio*, and so was not imprison'd only for being Mr. Prynne's Servant; That it was the constant Practice of the High Commission, as well as the Courts of Star-Chamber and the Chancery, to take the Charge *pro Confesso*, where the Party refused to answer upon Oath; and the High Commission never granted a Copy of the Articles, till the Party took the Oath *ex Officio*, which this Person refused, and that his Imprisonment appear'd to be the Act of the High Commission, and not his.

Then followed a Charge concerning the stopping of Books offer'd to the Press, and expunging things out of them: And the first was the *English Bible*, with *Geneva Notes*; and *Sparkes* the Printer testified he was called into the High Commission Court about these Books. And the Decree of the High Court of Star-Chamber about Printing was also laid to his Charge, as also, that he had used his Power to suppress some Books in *Holland*; and that he had opposed an Almanack, which had left out the

Stopping Books at the Press, and expunging Passages out of 'em.

Apostles, and other Saints, and put those in the Book of Martyrs in their Room; and several other Books which had been suppress'd, or Passages expung'd out of them by the High-Commission, &c. brought up the Rear of this Charge.

To this his Grace answer'd, That altho' the Bibles with Geneva Notes were tolerated in the Reigns of Queen Elizabeth and King James, they were not allow'd by Authority in either; and that King James, in the Conference at Hampton-Court, held, That the Geneva Translation was the worst, and many of the Notes very partial, untrue, seditious, and favouring too much of dangerous and traiterous Conceits. That of late these Notes were more us'd to ill Purposes than formerly, for which Reason the High-Commission had been more strict against them than formerly; and that Printing might be preserv'd here, they restrain'd their coming over from Holland, who us'd to import them much cheaper than they could be printed here. That he did, indeed, receive the Letter from John Le Mare, one of the great Preachers at Amsterdam, which was produc'd as Evidence against him, which gave an Account, that since the Proclamation made by the States, no Man durst print any seditious Libels against either the State or Church of England: And if it had been prov'd (as it was not) that any Directions were given by him about that Proclamation, he thought he had done a good Office, and could not be sorry for it — That as to the Star-Chamber Decree about Printing, it was their Act, and not his, but he thought it very useful and necessary; that Gellibrand deserv'd Censure for his Almanack, however he was acquitted by the Star-Chamber; and that he was not to be answerable for all the Slips his Chaplains had made in licensing Books, any more than he was for all that were censur'd in the High-Commission.

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Fifteenth Day.

Thursday, June 20, 1644.

His Grace observes, That at his Landing this Day, he was met by one Quarterman, an old Enemy of his, who seldom fail'd to rail plentifully at him every Day he came to Westminster; and this Day he cry'd

cry'd out, *What did the Lords mean to be troubl'd so long and so often with such a base Fellow, they would do well to hang him out of the way?* And Nicholas gave him such Language, as no Man would have given the vilest Scoundrel, especially at Tryal for his Life.

They produc'd a Letter from a Jesuit to his Superior, that was found in his Grace's Study, as a Charge against him, in which the Jesuit says, That *Arminianism* was their Drug and their Plot against us — And charg'd him, That he was the Occasion of Bishop Montague's Preferment, who was call'd in question by the Parliament — And a Paper of his was produc'd against him, intitled, *Considerations for the Church*, among which he finds fault with the present Lecturers, &c. And he was charg'd with altering the Prayers for the Fifth of November.

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Charg'd with altering the Prayers on the Fifth of November.

His Grace said, He did not know why he might not get or keep the Letter of any Jesuit, how else should he be able to prevent their Plots upon Religion? That the Letter was not directed to his Grace; and he did not see how he could be charg'd with any thing the Jesuit thought fit to say for the Advancement of his Religion. That Bishop Montague was prefer'd by the Duke's Means, and not by his. And as for Lecturers, he thought it would be more for the Ease of the People, and Peace of the Church, if it were perform'd by a Combination of conformable neighbouring Ministers, in their Turns, than by some one humorous Man, who usually misled the People. And since the Alteration of the Prayers for the Fifth of November in some little Matters, which he apprehended was for the better, was urg'd against him as a high Misdemeanor, because they had continued the same for thirty Years; he wonder'd that they did not remember that they themselves had not only alter'd, but taken away the Liturgy of the Church of *England*, which was establish'd by Act of Parliament, and which had continu'd above fourscore Years; nay, and quite abolish'd Episcopacy, which had continu'd in the Church of Christ above sixteen hundred.

Lecturers.

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Another Charge was, That Dr. Bray, his Grace's Chaplain, refus'd to license a Book of Sir Anthony

Hungerford's, which Sir *Edward Hungerford* brought over to *Lambeth*; and that Sir *Edward* applying himself to his Grace, he refer'd him to his Chaplain again.

His Grace answer'd, That his Predecessor always refer'd these Things to his Chaplains; and that it was impossible they could peruse every Book themselves, being engag'd in other Affairs: That his Chaplain was now dead, and he could not tell whether he had just reason to refuse it or not.

Thursday, June 27, 1644.

Sixteenth Day.

Expunging Passages against the Papists.

They accus'd his Grace, That his Chaplains had expung'd several Passages out of Dr. *Clerk's* and Dr. *Featley's* Sermons, and some of them, 'twas said, were against the Papists.

His Grace answer'd, 'Twas possible the Points were not justifiable against the Papists, and then they were better out than in; but however that Matter was, his Chaplains were answerable for it, and not he.

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Charg'd with maintaining Transubstantiation.

The next Charge was personally against his Grace, being part of his Speech in the Star-Chamber, viz. *The Altar is the greatest Place of God's Residence on Earth, greater than the Pulpit; for there 'tis Hoc est Corpus meum, This is my Body; but in the other it is at most but Hoc est Verbum meum, This is my Word; and a greater Reverence is due to the Body than the Word of God.* And from these Words Mr. *Nicholas* charg'd his Grace with maintaining Transubstantiation, because he said there 'tis *Hoc est Corpus meum*.

His Grace observ'd, That Mr. *Nicholas* confounded Transubstantiation with the real Presence; and *Calvin* himself, who was Enemy enough to Transubstantiation, yet granted a real and true Presence; and the Word there makes nothing against this, for after the Words of Consecration are pass'd, be the Minister never so unworthy, it is infallibly *Hoc est Corpus meum* to every worthy Receiver. But he said it was not *Hoc est Verbum meum* from the Pulpit to the best Hearers, and by the best Preachers, since the Apostles Times; and in 1 Cor. 11. 29. St. *Paul* speaks of a great Sin committed in his Time, of

not discerning the Lord's Body when unworthy Communicants receiv'd; that this was at the holy Table or Altar, that St. Paul says they receiv'd and yet did not discern, &c. and yet he did not think St. Paul maintain'd Transubstantiation: That Communicating was ever held to be the Touch-stone of Religion, and not Hearing; and all Divines agree in what our Saviour teaches, *Matt. 26. 26.* that there is the same Effect of the Passion of Christ, and of this blessed Sacrament worthily receiv'd.

Then the Licensing *Sales's* Book, and some others, by his Grace's or the Bishop of *London's* Chaplains, which contain'd Popish and Arminian Doctrine, were charg'd upon his Grace. But it appear'd, as to *Sales's* Book, which had more Popish Points than all the rest, his Grace's Chaplain was impos'd upon, and both *Sales* and the Corrector run away when the Matter was enquir'd into: And for the rest, his Grace said he did not find upon Perusal any Licence printed to them.

With licensing Popish and Arminian Books.

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It was further alledg'd against him, That Dr. *Martin*, his Grace's Chaplain, did not only print, but preach Arminian Doctrine at St. Paul's.

That his Chaplains preach'd Arminian Doctrine.

His Grace said, he did not know that he did either; but they might call Dr. *Martin* before them, and inform themselves, which they did the next Day, and he answer'd for himself.

The last Instance produc'd this Day, was the permitting the Sale of a Bible with a Popish Table to it, of which his Grace said he was never inform'd before; but he observ'd one of the Heads mention'd in the Table was Confirmation, which was commended by our Liturgy.

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A Bible with a Popish Table.

This Day all his Grace's Books were order'd to be taken from *Lambeth* by the House of Commons (and, as 'twas said, for the use of Mr. *Peters*.)

His Grace's Books given to *Hugh Peters*.

Friday, July 5, 1644.

Seventeenth Day.

This Day they charg'd him, That he prefer'd none to Bishopricks, Deanaries, Prebends or Benefices, but Men Popishly affected, or who were for Ceremonies or Arminianism, such as Dr. *Pierce*, Archbishop *Neile*, Dr. *Bray*, and other great Men.

Charg'd with preferring only such as were Popishly affected.

His

The *TRIAL* of

His Grace answer'd, That most of the Gentlemen they instanc'd in, were not prefer'd by him, neither did he know they held Popish or Arminian Tenets. And tho' to this Charge they added a Paper, which they call'd *Instructions to the Lord-Deputy of Ireland*: He said it was no more than some Memorandums that his Grace had made and given to my Lord-Deputy at his going over, upon his asking him what Service his Grace had for the Church there; and they were concerning such Things as were for the good of that Church, as appear'd to their Lordships on the hearing them.

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Then they proceeded to the Eleventh Original Article, That he had caus'd many pious and learned Divines to be silenc'd, depriv'd, &c.

His Grace, in his Answer, shews, That this Charge of Deprivation, &c. related either to some factious Lecturers, or what was done by other Bishops, or by the High-Commission, for which he was not answerable.

That he hinder'd the buying in Impropriations.

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Then they went upon the Sixth Additional Article. That whereas divers Gifts and Dispositions had been made for the buying in Impropriations for the Maintenance of preaching the Word, his Grace had caus'd the said Gifts and Conveyances to be overthrown in the Exchequer, under pretence of buying in Impropriations.

His Grace answer'd, That he found this to be a Project to undermine the Church; that twelve Men, who were the Trustees in this Matter, without any Authority, took upon them to dispose of this Charity, as they call'd it, to whom they saw fit; and they bestow'd it only on Persons disaffected to the Doctrine of the Church, to School-Masters and Students in the University, to breed them up in Opposition to the Church; and dispos'd of none of it to the present Incumbents, to whom the Tythes were due, unless they appear'd to be of their factious Principles; and by this means they would, in a short time, have brought the greatest part of the Clergy to depend upon them. Upon this his Grace said, he advis'd with Mr. Attorney, as to the Legality of their Feoffment or Disposition; and

and the Matter was try'd, and determin'd to be illegal in the Court of Exchequer — But that none had been more zealous for purchasing and getting in Impropropriations than himself, where they might be apply'd to a proper Use.

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June 17, 1644.

Fifteenth Day.

They went upon the Twelfth Original Article, That he endeavour'd to make a Division between the Church of *England* and the reform'd Churches, by depriving the Foreign Churches here of their Privileges and Immunities.

Endeavouring to create a Division between the Church of *England* and the reform'd Churches.

To make good this Article, first a Passage in his Grace's Book against *Fisher* was produc'd, viz. *No Bishop, no Church*; and consequently the reform'd Churches were no Churches.

His Grace answer'd, This was an Inference of *St. Jerome's*, no Declaration of his own; and if they were offended at it, they would do well to answer *St. Jerome*.

And to support this Article, a Passage in *Bishop Montague's* Book, before mention'd to be found in his Grace's Study, was produc'd, viz. That none but a Bishop could ordain, but in Case of Necessity.

His Grace answer'd, That this was the Opinion of many learned and moderate Divines; and whether the Foreign Churches were under that Necessity, might deserve Consideration.

Another Instance of his Enmity to the reform'd Churches, was, That he advis'd *Bishop Hall*, in a Book he consulted his Grace about, not to affirm positively that the Pope was Anti-christ.

Charg'd that he would not own the Pope to be Anti-christ.

His Grace answer'd, That he did, indeed, advise him not to assert it *positively*; and did communicate to *Bishop Hall* what *King James* said, when it was urg'd against him that he held the Pope to be Anti-christ, viz. *I maintain it not as a Point of Faith, but as a probable Opinion, and for which I have more Grounds than the Pope hath for his Challenge of Temporal Power over Princes*; let him recall this Opinion and I'll recall that. And his Grace adds, That he did not think the calling the Pope Anti-christ, ever converted one understanding Papist; nor had *Gabriel Powel* done

done the Church of *England* much Service Abroad, by affirming, *That he was as certain that the Pope was Anti-christ, as that Jesus Christ was the Son of God and Redeemer of the World.* As for the Thing itself, his Grace said he left Men at Liberty to think as their Judgments guided them, as appear'd by the licensing Dr. *Featly's* Sermons, where he endeavours to prove the Pope to be Anti-christ and the Whore of *Babylon*.

His Grace receives abusive Language at his Tryal.

Here Mr. *Nicholas* took Occasion to give his Grace the most scurrilous Language he could invent, and among other Titles gave him that of *Pander to the Whore of Babylon*. Whereupon his Grace address'd himself to the Lords, and said, tho' they did not think fit to treat him as an Archbishop, he hop'd he should be us'd as a Christian: And that were it not for the Duty he ow'd to God, and his own Innocence, he would desert his Defence before he would endure such Language: Whereupon some Lords express'd their Dislike of the Language, and bad *Nicholas* go on with his Evidence.

Page 44.
Episcopacy
Jure Divino.

It was urg'd further against his Grace, that he had asserted, *That Church-Government by Bishops was not alterable by humane Laws*; and that he said this was the Doctrine of the Church of *England*.

His Grace answer'd, That Bishops might be regulated and limited by humane Laws in those things which were but Incidents to their Calling; but their Calling, so far as it was by Divine Right, could not be taken away. That this was also the Judgment of the Church of *England*, as appeared by the Preface to the Book of Ordination; which says, *From the Apostle's Time there have been three Orders of Ministers in the Church of Christ, Bishops, Priests and Deacons*; and that this Book was confirm'd by 8 *Eliz. cap. 1.* And it was a little absurd for them to cry out of Innovations, who had thrown Bishops out of the Church, after they had continued for 1500 Years.

Another Instance to maintain this Charge of oppressing the Foreign Churches, was, that in a Brief for the distressed Ministers in the *Palatinate*, he had struck

struck out the Words *Antichristian Yoke* ; and in that Clause, *The Religion which we with them profess*, he had left out the Words [with them.]

His Grace answer'd, he did not remember the Alteration ; but if he did except to the first Passage, it was because it could only move the Scorn of the common Adversary to offer to determine such a Controversy by the Broad Seal. And as to the last, it did not follow that he design'd to make the Religions different, but their Opinions under the same Religion : And that if his Grace had thought them to be of another Religion, he should not have us'd his Interest to improve that Collection, as it appear'd he had done. — And his Grace observ'd, that they brought no manner of Proof of his Endeavours to abrogate the Privileges and Immunities of the *French and Dutch Churches* here, which made up the Body of this Article.

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Then they went on to the 13th Original Article, and seventh Additional Article, That he had traiterously endeavoured to reconcile the Church of *England* to the Church of *Rome*, &c. and to that end had confederated and convers'd with Jesuits, &c.

Charg'd with projecting to reconcile the Church of *England* to the Church of *Rome*

To maintain this Article, Dr. *Featley* depos'd, That about thirty Years since his Grace was reported to be Popishly affected at *Oxford* : And one *Harris* depos'd, that one *Ireland* told him, his Grace would leave the Church of *England*. That they had the same Reports beyond Sea : And they said it was plain his Grace was in a damable Plot to reconcile the Church of *England* to the Church of *Rome* ; because the Copy of a Letter from the Pope to his Nuncio in *Spain*, and of another Letter of the Pope's to King *Charles*, were found in his Grace's Study. And another Argument to maintain this Article was, that his Grace was intimate with the Duke of *Buckingham*, who went with his Majesty into *Spain*, and receiv'd Letters from the Duke when he was there. That the Duke of *Buckingham* was concern'd in the Match with *France*, and wrote to his Grace from thence : That his Grace was an Instrument of the Queen's ; for that it appear'd by his Diary she order'd he should have immediate Access

And conversing
with Jesuits,
and harbouring
them.

A Cardinal's
Cap offer'd him.

Access to her : That he forbid Ministers praying for the Queen's Conversion, and for the Preservation of the Prince : That Papers were found in his Grace's Study, which were printed at Rome ; that he conceal'd Papers sent him by one *Habermfield* about a great Plot. That his Grace convers'd with *Sancta Clara*, alias *St. Giles*, a Popish Priest, and maintain'd him while he was writing a Book, entitled, *Deus, Natura, Gratia* ; that *Sancta Clara* and *St. Giles* were the same Person, and his Grace provided for him at *Oxford*. And lastly, they found by his Diary that a Cardinal's Cap had been offer'd his Grace.

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Praying for the
Queen and
Prince.

His Grace answer'd ; As to the Reports of his being Popishly inclin'd, they were but Reports ; and the Witnesses had not instanc'd in one Popish Opinion that was maintain'd by him, except it was what *Sir Nathaniel Brent* attested, That his Grace asserted the Necessity of Baptism in the Divinity School at *Oxford*. — That if they had prov'd he had laid any Plot for reconciling the Church of *England* with the Church of *Rome*, with the Maintenance of Idolatry, it were a damnable Plot indeed ; but if Christian Peace and Truth might be establish'd all over Christendom, he should think himself happy if he was able to establish such a Reconciliation whatever he suffer'd. And as to their Proof of the Matter from a Letter or two of the Pope's, directed to others, that were found in his Study, it was not at all concluding, for his Predecessors had many such Letters by them ; nor was there one Word in those Letters that cast any Reflection upon him, or shew'd any Plot of his : Nor was it better prov'd, that he had a hand in sending the King to *Spain*, or in the Match with *France*, because he was intimate with the Duke of *Buckingham*, and received Letters from him : And if there was any thing in these Letters tending to either of these Designs, why were they not produc'd and read that he might give an Answer to them ? And for her Majesty's ordering that he should have Access to her, he did not know what they could make of that. As to the Proof of forbidding Ministers to pray for the Queen's Conversion ; the
Witness

Witness only said, that Sir Nathaniel Brent gave it in Charge at a Visitation, and he told the Witness it was by Command from his Grace : But he said Sir Nathaniel Brent should have come and attested this himself, for this was but Hear-say : And as for a Paper that was produc'd to prove it, it appear'd to be a Particular of Informations given to his Grace, and not Instructions of his, as had been open'd. That indeed he did forbid the Praying for the Queen in that scandalous manner some did, and he believ'd one Jones was punish'd by the High-Commission for scandalizing the Queen, under Pretence of praying for her : As was Mr. How for praying God would preserve the Prince in the true Religion, of which there was Cause to fear ; which was done in order to scandalize his Majesty, as being careless in the Prince's Education, especially in Point of Religion.

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As to concealing Habernfield's Plot, his Grace said he sent the Papers to the King the very Day he received them : And by those Papers it appear'd there was a Conspiracy against his own Life, if he would not give way to an Alteration of Religion, and yet they had the face to press those Papers against him. — That *Sancta Clara* was brought to him by some great Man, and he solicited for Licence to print a Book or two : One of them was to prove that Bishops were of Divine Right ; but his Grace said, he did not like the Method the Church of Rome took to prove it, and he refus'd to license them. That he never had any Maintenance from his Grace ; neither did he then know him to be a Priest : That the Book was afterwards printed at Lyons, and he had no Hand in the publishing it. — That *St. Giles* was another Person, and a Frenchman, and had a Place about her Majesty at her first coming ; that he had done some Services to this State, and by it lost himself in France, and could not return thither ; that his Majesty told his Grace he was in Honour bound to provide for the Man ; and upon his Desire to be at Oxford, that he might have the Benefit of the Library there, his Majesty would have had him plac'd in some College, but his Grace oppos'd it ; and he found a Lodging in a private

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private House in *Oxford*, and had the Benefit of the Library; and his Majesty allow'd him 100 Marks a Year. But before he went to *Oxford*, he engaged not to converse with the young Students, and Care was taken by the Vice-Chancellor that he should not. — His Grace said he suppos'd the Reason this was urg'd so much against him; and that those Endeavours were us'd to prove him the same Man with *Sancta Clara*, was because *Sancta Clara* was an *Englishman*, and they would have brought him within the Statute, which makes it Felony to relieve, or harbour a Popish Priest; but *St. Giles* being a Foreigner, his Grace shew'd he had not incur'd the Danger of that Statute.

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That as to the Cardinal's Hat being offer'd him, he could not help it, unless he had been endued with the Spirit of Prophecy; but they would have done well to have inserted his Words when he refus'd it, viz. *That somewhat dwelt in him, which would not suffer him to accept that till Rome were other than now it was.* Besides, he went presently to his Majesty and acquainted him with it, which was all the Law requir'd, and his Majesty, in a mild way (the Person who offer'd it having relation to an Embassador) soon freed him from the Trouble and Danger of it. That as to Signior *Con*, who, his Enemies said, was empower'd to make him the same Offer, he knew nothing of it, neither did he see him or suffer him to come near him all the time he was here, tho' great Application was made to him that he would: Besides, that if the Offer of a Cardinal's Hat would make a Man a Traytor, then any Papist might bring any Bishop of *England* within the Danger of High-Treason.

Nineteenth
Day.That he deny'd
the Pope to be
Anti-christ.

Monday, July 24, 1644.

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This Day they went upon the same Articles they did the Day before; and charge his Grace again with denying the Pope to be Anti-christ; urging that the Homilies make the Pope Anti-christ and the *Babylonish* Beast of *Rome*. They charge him again also with the Doctrines contain'd in several Books found in his Study: That he had said the Religion of the Church of *Rome* and ours was
all

all one; that the Church of Rome and we did not differ in Fundamentals, but in Circumstances; that Rome was a true Church, &c. tho' the Homilies say, that the Bishop of Rome and his Adherents are not the true Church. Then a Passage out of his Grace's Diary was read against him, where he says, *I prefer'd Mr. Secretary Windebank, my old Friend.* And after Nicholas had told the Lords, that Secretary Windebank favour'd Priests and Jesuits, and convers'd with them, and made the Secretary as black as he could; then he laid all his Faults upon his Grace, who, he said, prefer'd him to the King.

And said Rome was a true Church, &c.

Then they again endeavour'd to prove his Grace corresponded and conversed with Popish Priests; and one Wadsworth, a common Messenger, that us'd to attach People, came to prove that one Fludd had brag'd he was acquainted with his Grace; and that four Pounds were sent him to free him out of Prison, and one Davis told him it came from his Grace. And Newton, Mayor, and some other common Messengers, were brought to depose that his Grace convers'd with Sir Toby Matthew, who was reported to be a Priest; and that when the Messengers have brought Priests before him he would not meddle in the Business, particularly Fisher the Jesuit; and one Thresher a Messenger depos'd, that when he had taken Mors and Goodwin, two Priests, Secretary Windebank took away his Warrant and dismiss'd them; and that his Grace himself was angry with the Messenger about it.

Reliev'd Priests

And his Grace was accus'd, That he would not suffer the Popish Books, that were seiz'd, to be destroy'd, but sometimes they were return'd to the Owners. It was also charg'd upon him, that Priests had the best Lodgings in Newgate, and liberty to walk the Streets. And it was urg'd as a great Fault in him that he says in the Preface to his Book against Fisher, *That, to his Remembrance, he had not given him, or his, any coarse Language.*

Would not of the Popish Language

His Grace answer'd, It was not prov'd he deny'd the Pope to be Anti-christ; but that he advis'd Bishop Hall to forbear that Word, for some temporal and ecclesiastical Respects. Besides, he did con-

The Homilies
do not make the
Pope Anti-
christ.

ceive that that Article of the Church of *England*, which confirm'd the Homilies, did not confirm every Phrase that was in them; nor did he think that the Homilies in the Places cited did make the Pope the great Anti-christ, for the Words are *to the beating down of Sin, Death, the Pope, the Devil, and all the Kingdom of Anti-christ*; which Words could not possibly imply that the Pope was Anti-christ — That as to his saying the Religion of Rome and ours is all one, his Words were, *Nor do the Church of Rome and the Protestants set up a different Religion, for the Christian Religion is the same to both.* And he said, unless they maintain'd that Papists were no Christians, they could make nothing of this Charge: And as to another Saying of his, that *we did not differ in Fundamentals*, Calvin himself affirm'd, *That in despite of Anti-christ, the Foundations of the Church remain'd in the Papacy itself, that the Church might not wholly perish.* And whereas Burton and Lane depos'd, that he said we did not differ in Fundamentals, but in *Circumstances*, they should have said *Superstructures*; for there were many Circumstantials in Religion that might quite destroy the Foundation of Religion; for he who denies how or where Christ was born, or whether he is already come in the Flesh, denies the Foundation of our Religion, tho' these are but Circumstances, as to the Time, Place and Manner of our Saviour's Birth.

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And as to his contradicting the Homilies, by saying *The Church of Rome was a true Church*, he shew'd that the Homily did not say that the Church of Rome was not a true Church, but said and meant that the Church of Rome was not the Catholick or Universal Church, or the Head thereof; and that there was a great deal of Difference between *the Church* and *a Church*; and tho' it could not be call'd *the Church*, in general Terms, yet it must be admitted to be *a Church*, and a true one too — As to Mr. Secretary Windebank, he was an old Friend of his, and he thought him a Man of Honesty and Worth; but if he was deceiv'd in him, he was alive to answer for himself; and there was no Reason he should be answerable for all the Secretary's

tary's Errors; if he had committed any; for it was well known they had been in different Interests of late Years; but, upon the score of old Acquaintance, he did not think fit to say any more on that Head. That for the Secretary's having set any Priests at Liberty, he must answer it himself; that, for his own Particular, he had never set his Hand to the Release of one of them, in all his Time; nay, he had been so careful, that he had never set his Hand to a Licence to any young Gentleman to travel, lest he should be perverted Abroad, and then that should have been imputed to him — He acknowledg'd he did send four Pounds to release *Fludd* out of Prison, being acquainted that he was a Convert from Popery, and that his Imprisonment was occasion'd partly on that Account; and this a Servant of his Grace's testified.

As to the Witness that swore he saw *Sir Toby Matthew* with him, his Grace observ'd he was a profligate Fellow, and one who had shifted his Religion several times; and his Grace produc'd the Servants who attended him constantly, who depos'd they never saw *Sir Toby* with his Grace. As to *Fisher* the Jesuit, his Grace said he did not think it proper to act in that Matter, lest it should be said, when he could not answer him he sought to destroy him — And as to the Witness, who said, when he had taken *Mors* and *Goodwin*, two Priests, Secretary *Windebank* dismiss'd them, and his Grace was very angry with him about it, Mr. Secretary must answer for himself; but his Grace had great Reason to be angry with *Thresher*, for having got his Hand to the Warrant, he proceeded to execute it, without taking any other Hands; and no Warrant could issue from the High-Commission-Court under three Hands at least — As to the Popish Books, it was the constant Course of the High-Commission to give them to their Register to be kept in his Office, and when they had a good Number of them, then to burn them; and if at any time the Books were redeliver'd to the Owners, it was when they were not found dangerous — He said it was hard they should charge him with the Confinement or Liberty given to the Prisoners in *Newgate*; they

did not sure design to make the Archbishop Keeper of *Newgate*. ——— And as to his not calling Names, and giving *Fisher* and the Pope ill Language, when he wrote against them, he was still of Opinion, that ill Language added very little Weight to an Argument.

Twentieth Day.

July 29, 1644.

Charg'd with endeavouring to subvert the Rights of Parliament.

They proceeded on the fourteenth Original Article, viz. That to prevent his being question'd for these and other his Traiterous Proceedings, he had endeavour'd to subvert the Rights of Parliament, and create a Division between his Majesty and his People, and ruine his Kingdoms; for which they impeach'd him of High Treason.

To support this Article, he was charg'd with making one Speech for the Duke of *Buckingham*, and altering another when he stood impeach'd by the House of Commons in *May*, 1626. That he had made two Speeches for the King, to be spoken or sent to the Parliament, in which were some four Passages. And one *Bland* depos'd, that Sir *Sackville Crowe* shew'd him a Paper, in which were fifteen or sixteen Passages concerning Parliaments, with some four Aspersions in them, and it was subscrib'd with his Grace's Hand, *W. Laud*. Then these Words in his Diary were read to shew his Enmity to Parliaments; viz. *June 15. 1626. Post multas agitationes privata malitia in Ducem Buckinghamiae superavit, & suffocavit omnia publica negotia; nihil actum est, sed Parliamentum solutum*: And from hence it was urg'd, that he charg'd the Parliament with Malice. It was further urg'd, that the Proclamation for calling in the Remonstrance was found in his Study, and they conceiv'd he had a hand in it, for his Preferments follow'd very quick — Then was produc'd a Paper, which they call'd his Grace's Reasons against Parliaments, being in his Hand — And these Words were read out of his Diary, (viz.) *The Parliament, which was dissolv'd 10 Mar. 1628. sought my Ruine*: And as a further Proof of his Enmity to Parliaments, some marginal Notes of Sir *Benjamin Rudyard*'s Speech in Parliament were produc'd. The next Instance was, that he found fault with Eight Bills

Bills that were brought into the House: That he had Spies to give him an Account of the Election of Parliament Men in Gloucestershire; for Proof whereof they produc'd a Letter from one *Allibone* to Dr. *Heylin*. Then a Passage in his Diary was read, which he says he supposes was design'd rather to expose him, than make good the Charge; viz. 27 Oct. 1640. Going into my upper Study to send away some Manuscripts to Oxford, I found my Picture fallen down upon the Face, and lying on the Floor; I am almost every Day threatned with my Ruine. God grant this be no Omen of it. Then another Passage in his Diary (half of it burnt out) the Managers took upon them to read, and supply what was wanting with their own Invention; the last Words whereof highly reflected upon their Lordships Justice, as was urg'd; (viz.) So I see what Justice I may expect, since here's a Resolution taken, not only before my Answer, but before my Charge is brought up against me. And a Paper was produc'd against him, wherein he says, that *Magna Charta* had an obscure Birth, and was foster'd by an ill Nurse: And they concluded with a Dream which they said his Grace had; (viz.) That he shou'd come to greater Preferment in the Church, and Power in the State, than any Man of his Birth and Calling had done before, but in the end he should be hang'd. And the Earl of *Pembroke* depos'd in the House, that his Grace told him, he had such a Dream. Whereupon Mr. *Nicholas* said, the first part of his Dream had prov'd true, to the great Hurt both of Church and State, and he hop'd their Lordships would now make good the latter, and hang him.

Find his Picture fallen on the Face.

His pretended Dream.

To this Article his Grace answer'd, there was no particular Fault found with the Speeches he made, or corrected for the Duke of *Buckingham*, when he stood impeach'd; but only that he, being a Member of the Lord's House, and in that respect a Judge, became his Advocate: And he conceiv'd, that since nothing was done against Law, it was not criminal for one Friend to assist another in such Circumstances, and he was persuaded many in either House on the like Occasions had done the same — As to the King's Speeches he was charg'd with, he acknowledg'd he drew them, but that he follow'd

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his Instructions close, and submitted it to their Lordships, if they could be made the Foundation of such a Charge — That as to the Paper Mr. *Bland* depos'd Sir *Sackville Crowe* shew'd him, his Grace protested he never gave Sir *Sackville* any such Paper, and the Truth of it was very much to be suspected, because *Bland* depos'd that it was sign'd *W. Laud*, and he was then Bishop of *St. David's*, and never writ his Name otherwise than *Guil. Meneven*. at that time: And that the first Additional Article (wherein the same Fact is charg'd as in the Paper *Bland* mentioned) is as inconsistent as *Bland's* Testimony; for in one part it says, that these Propositions had caus'd the Parliament to be dissolv'd, and within three Lines it says, these Propositions were deliver'd to the Duke of *Buckingham* after that Parliament was dissolv'd — That the Words *privata Malitia* in his Diary cou'd not relate to the Parliament, but to some private Men in that Parliament, and if there were some in the Parliament, who did him ill Offices on a private Disgust, it was no new thing: — That as to Mr. *Nicholas's* Conceit, that his Grace had a hand in the Proclamation for calling in the Remonstrance, because his Preferments follow'd so soon afterwards; it was by his own Confession four or five Years afterwards before he was prefer'd — That as to the Paper, which was call'd Reasons against Parliaments; it appear'd to contain some Hopes and Fears which were conceiv'd of a Parliament, and not Reasons against them; that the Parliament was not then in being, and it was no uncommon thing to deliberate about the Expediency of calling one; besides his Grace was but an *Amanuensis* at that time, and not the Author of those Hopes and Fears, tho' he was commanded to give his Opinion indeed as a Privy Counsellor, which he could not in Duty refuse; however that those Hopes and Fears related but to that one Parliament, and the Hopes prevailed, and the Parliament sat — As to the Note in his Diary, That such a Parliament sought his Ruine, it was a much better Argument to prove the Parliament an Enemy to him, than he to them. — As to the Words *reducing and gaining*, which he seem'd to dislike in Sir *Penjam.*

Rudyard's

Hopes and Fears
concerning a
Parliament.

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Rudyard's Speech ; he thought his objecting to a Phrase or two in a Member's Speech would never prove him an Enemy to Parliaments. And he was still of Opinion, that where a King labour'd to gain upon the Liberty or Property of the Subject, or the Subjects in Parliament labour'd to gain from the just Power and Prerogative of the King, the Publick cou'd not thrive the mean while. — That it was not prov'd he dislik'd any Bills that were brought in, however every Member had a Privilege of objecting to Bills before they were pass'd ; — That as to his drawing the Answer to the Remonstrance, as was press'd again, he did it by Command, and agreeable to his Instructions. And as to the Particulars urg'd to be obnoxious, (*viz.*) *That they sought to fill our Peoples Hearts, more than our Ears ; And that they swell'd to that Bigness, 'till they break themselves ;* neither of these Expressions struck at the Rights or Privileges of Parliaments : And for the Remonstrance, whether that tended he appeal'd to the World. Another Particular complain'd of in the Answer was the Excusing of Ireland, and the Growth of Popery there, of which the Remonstrance complain'd. But his Grace observ'd, that the State of Religion in Ireland was much the same in the Reigns of Queen Elizabeth and King James, as it was then : That in those Times they had their Romish Hierarchy, submitted to their Government, paid their Tythes, absented themselves from the Protestant Churches, and rebell'd under Tyrone on pretence of Religion ; and he did not see they had done more in this Reign : And tho' they had shewn that Instructions were given to his Grace of the Growth of Popery in Ireland, yet these were all since the Answer to the Remonstrance : And as to the Letter produc'd from the Earl of Strafford, and order'd to be communicated to his Grace, wherein was this Expression, *That in order to mould the Lower House, and govern them the better, he had got them chosen of an equal Number of Protestants and Papists ;* he cou'd not help what the Earl would write, and it was not sent to him neither, and there were several other Passages in the Letter, which occasion'd its being communicated to him. As to his concerning him-

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Answer to the Remonstrance.

Earl of Strafford procures the House of Commons in Ireland to be chosen half Papists and half Protestants.

self in the Election in *Gloucestershire*, there was no Proof of it, but a Letter from one *Allibone*, a Stranger to his Grace, to Dr. *Heylin*: And if Dr. *Heylin* communicated this to his Grace, to shew what Practices had been us'd, he saw no great matter in it. — As to his looking on the Fall of his Picture, as ominous (knowing at the same time how many ways his Ruine was sought) he apprehended it without Passion, and wish'd, looking up to God, that it might not prove ominous to him. — As to that Passage, *So I see what Justice I may expect*, &c. it was introduc'd with an *If* such a Parliament Man told him true: And he must still say, if a Resolution was taken to condemn him before any Charge brought in, or Answer made, he might be allow'd to say what follow'd. — That there was no Proof that the Expression, *That Magna Charta had an obscure Birth*, &c. was his own: And indeed the Expression was to be found in several Law-Books.

As to the pretended Dream, he said though the Earl of *Pembroke* had taken the Truth of it upon his Honour, his Grace never had any such Dream; and when the Thing was first printed by *Prynn*, he complain'd to his Majesty of it; and that *Prynn* he found had the Story from one *Badger*, a zealous Fanatick; who, tho' he married a near Relation of his Grace's, was much nearer to Mr. *Prynn* in Affection, than to his Grace in Alliance: He said, he had not forgotten the Prediction of our Saviour, *That in the World we should be sure to meet with Affliction*; nor his Prayer, *Father forgive these Men, for they know not what they do*; and concluded with a Prayer, that God wou'd bless both King and People, submitting himself to his Divine Will.

Before his Grace was taken from the Bar, he mov'd, that he might have a Day assign'd him to make a Recapitulation of the whole Proceeding; and that his Council might speak to the Points of Law; and that their Lordships wou'd remember he had pleaded the Act of Oblivion to the 13th Original Article — Accordingly, after they had consulted the Commons, Monday 2. Septemb. was assign'd for a Recapitulation; and it was Resolv'd in the House of Commons he shou'd have the Benefit of the Act of Oblivion, as to the *Scotch* Business.

The

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He has the Benefit of the Act of Oblivion, as to the Scotch Affair.

The 2d Septemb. 1644, when his Grace appear'd to make the Recapitulation, he observ'd every Lord had a small Folio in his Hand, which prov'd to be his Grace's Diary, that *Prynn* had printed with his Notes or Remarks upon it, among which Remarks were many notorious Falshoods.

His Grace's Diary printed in Folio, and given to each Lord.

At this Hearing his Grace took Notice, that his Tryal began Mar. 12. 1643, and ended in July following; that their Lordships had heard him twenty Days during that time, and twelve Days sent him back without hearing, and the rest of the time had been taken up in preparing the Charge against him.

He desir'd their Lordships would consider his Calling, his Age, his long Imprisonment, what he had suffer'd in his Estate, and his Patience through this whole Affliction: That they would observe the Generality, and consequently the Uncertainty of almost every Article, which made his Defence so extremely difficult.

His Recapitulation.

That the Use of his Study, his Books and Papers were taken from him: And of twenty three Bundles of Papers prepared for his Defence, and taken from him by Mr. *Prynn* in the Tower, but three were return'd again; that his very Pockets were search'd, and even his Diary and Prayer-Book taken from him, and made use of not to prove, but to frame a Charge against him: But he was thus far glad of this sad Accident, that their Lordships by his Diary had seen the Passages of his Life, and by his Prayer-Book the greatest Secrets between God and his Soul; and altho' they had seen the very bottom of him, he thank'd God they cou'd find no Disloyalty in the one, or Popery in the other; That all the Books of the Council-Table, Star-Chamber, High-Commission, Signet-Office, Registries of *Oxford* and *Cambridge*, had been most exquisitely search'd for Matter against him; and he suffer'd to have no Assistance from any of them towards his Defence.

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The Papers he had prepar'd for his Defence taken from him; and all things necessary for his Defence denied him.

He desir'd their Lordships to observe, that even those Actions which tended to the publick Good and the Honour of the Church and Kingdom, and in which he had been at great Pains and Expences, such

His best Actions made the Foundation for a Charge of High Treason.

such as the Repairing *St. Paul's*, and settling the Statutes of the University of *Oxford*, were objected to him as Crimes ; and tho' they cou'd not for Shame charge him with the Repair itself, yet they did with the taking away the Houses, without which it was impossible to be done ; and that was done by Virtue of a Commission under the Broad Seal, as had been practis'd formerly, and a valuable Consideration made the respective Tenants.

No Schismatick may be a Witness against his Bishop by the Civil Law.

The happy State of the Kingdom, while his Grace was concern'd in the Administration.

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Charg'd with the Acts of the respective Courts wherein he sat.

That many of the Witnesses brought against him were Sectaries and Separatists from the Church, whom he being by his place oblig'd to punish were exasperated against him ; and by the Civil Law no Schismatick was to be admitted as a Witness against his Bishop. These were also Witnesses in their own Causes ; and many Tryals, that took up several Days hearing in the Star-Chamber, High-Commission, and at the Council-Table, were on the sudden overthrown by the Testimony of the Parties themselves : And he represented to their Lordships, how impossible it was for one, that had sat as Judge in so many several Causes, to give an account of the respective Motives that directed his Conscience in every one of them, after so many Years pass'd : That he had done nothing, but what to the best of his Understanding he thought might conduce to the Peace and Welfare of this Kingdom, and the Maintenance of the Doctrine and Discipline of this Church as establish'd by Law ; and under the late Administration God was pleas'd to bless this State with so great Peace and Plenty, as the neighbouring Nations had look'd on it with Admiration ; what the Overthrow of it (which he beg'd God to avert) might produce, he only knew — That every hasty Expression, to which he had been urg'd by the highest Provocations, was insisted on to aggravate the Charge, but his Grace hoped their Lordships would impute them to human Frailty. That he was in many Instances charg'd, and that criminally, with the Actions of other Men ; as also with all the Acts of the Star-Chamber, Council-Table, High-Commission, and Convocation, where he had but a single Vote, and in some of these places he was accompanied with Men of the greatest

greatest Honour, Learning and Experience ; and it was strange, that the same thing should be construed Treason in him, which was not censur'd as a Misdemeanor, or even a Crime in any of the rest ; and there had been no Proof of his soliciting any to concur with him, nor could his Vote influence others, because it was given last. And because he had been treated with that Contempt by the Managers for the Reverence he shew'd in the Consecration of Churches, and at the Performance of Divine Offices, he beg'd leave to read a Paper he had transcrib'd out of Sir *Walter Raleigh's* History of the World, in relation to this matter ; but Serj. *Maynard*, before he had read a third part of it, objected to the reading of it, because the Book itself was not there ; [The Reader may find it, *L. 2. c. 5. Sect. 1.* of Sir *Walter*, and in the first Volume of Tryals at large, p. 473.] — As to their Charge, of his having prefer'd unworthy Men, they were such as wou'd have been famous for their Lives and Learning, had they been in any other part of Christendom. Whereas great Strefs had been laid upon an Expression in a Letter of his Grace's, in Answer to Dr. *Potter*, as to a Book the Doctor was about to publish, (*viz.*) *That if he express'd himself so, he wou'd give as much Power to the Parliament, in the Matters of Doctrine, as to the Church ;* from whence it was urg'd that he wou'd take away *All* Authority of this kind from the Parliament.

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To this he answer'd, that the Words *as much* cou'd never be construed to signify *All* ; and that his Intention was, that the Doctor shou'd so consider of his Words, as that what was proper to the Church might not be ascribed to Parliaments: And he thought the Law was plainly with him in this matter, for the Words of the Statute of 1 *Eliz. c. 1.* are, *Or such as shall hereafter be order'd, judg'd, or determin'd to be Heresy by the High Court of Parliament, with the Assent of the Clergy in their Convocation ;* from whence he infer'd, that the judging of the Truth or Falshood of a Doctrine was still in the Church, but the judging and determining Power for binding to Obedience and for Punishment was in the Parliament, with the Assent of the Clergy ; and he

The Church is to determine what is true Doctrine, and not the Parliament.

con-

conceiv'd, the Parliament cou'd not, as the Law stood, determine the Truth of Doctrine without the Assent of the Church in Convocation: That the first Clause in *Magna Charta* establishes the Church in all her Rights, of which *the Power of determining in Matters of Doctrine and Discipline of the Church was one at that time*: Nor had this Right of the Clergy been bounded or limited by any Law since, but by this Clause in 1. *Eliz.* That indeed the King and the Parliament might by their absolute Power change Christianity into Mahometism, if they pleas'd; and those Subjects, who could not obey, must either fly or endure the Penalties inflicted for their Disobedience; but both King and Parliament must answer to God for the Abuse of such Power; for by the Rules of natural Justice and Equity, no Power cou'd do that which they cou'd not lawfully do: And my Lord *Brook* had told them, *that what a Church will take for true Doctrine, lies only in that Church*: And the very Heathens acknowledg'd the Justice of this; for *M. Lucullus* says in *Tully*, *That the Priests were Judges of Religion, and the Senate of Law*. And tho' it be said, that if the Parliament might not have meddled with Religion without the Convocation, there had been no Reformation; yet even at the Reformation, when Articles of Religion were to be settled, a Synod was called, where they were agreed upon; and they were confirm'd by Parliament, with the Assent of the Clergy in Convocation.

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If the Actions themselves are not Treason, the Result of them cannot be Treason.

And whereas it had been said, that they did not urge any particular Action against him as Treason, but that the Result of them altogether amounted to Treason, he beg'd leave to acquaint their Lordships, that the Result must be of the same Nature and Species with the Particulars, from which it arises; and as this Rule held in Nature and Morality, so it did in Law; for where there were never so many Crimes heap'd together, yet there was no Law in this, or any other Kingdom, that made the Result of different Crimes Treason, where none of the Particulars were Treason by Law: Besides, 25 *Ed.* 3. had determin'd what shou'd be accounted Treason, and what not, within this Kingdom; and unless

unless this Result was something within that Statute, it cou'd not be Treason.

[I have purposely omitted such Points in his Grace's Recapitulation, as have been spoken to fully before, and only mention'd such matters, as were not enlarg'd upon at the other Hearings, it being my Business to avoid Repetition as much as possible: And if the Reader upon the whole finds that nothing material is omitted, that was insisted on by either side, he will have no Reason to find fault, tho' I have sometimes taken the liberty of transposing and laying distant passages together, which relate to the same Article, to give the Argument a greater Force, and render Things the more perspicuous.]

On Monday, Septemb. 11. 1644, Mr. Brown summ'd up and made his Observations on the Evidence for the Commons. Then his Grace desir'd his Council might be heard to these Points of Law; 1. Whether all or any of the Articles amounted to High Treason by the Laws of this Kingdom. 2. Whether the Charge contain'd in them was made with that Certainty the Law requir'd in Cases of Treason. And these Points being sent down to the Commons, they agreed his Council shou'd be at liberty to argue the first, but wou'd not suffer any Dispute as to the latter: And his Grace's Council had liberty to search for, and take Copies of, all such Records as were necessary for his Defence: And Mr. Hern, Mr. Hale, and Mr. Gerard, being of Council for his Grace, on Friday, Octob. 11. they were directed to attend with his Grace, and Mr. Hern was pitch'd upon by the others to deliver his own and their Arguments, which he did to this Effect. He said, that as to the Charge, and the Archbishop's Defence hitherto made, tho' they had been assign'd his Council, they neither had nor could be useful to him, by reason the Charge was so mix'd, that they could not distinguish what was thereby intended to be a Charge of High Treason, and what of Misdemeanor only: And that as the Defence hitherto offer'd had been wholly his own, so the Arguments they had prepar'd this Day for his Defence had been fram'd without consulting him. He observ'd that the Charge in general was no more than this; 1. That his Grace had endeavour'd to subvert

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Mr. Brown
sums up the
Evidence, and
makes his Ob-
servations on it
for the Com-
mons.

His Grace's
Council show
that nothing
charg'd in the
Articles a-
mounts to High
Treason.

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The uncertainty
what was Treason
at Common
Law.

subvert the Laws. 2. He had endeavour'd to subvert Religion. 3. That he had labour'd to subvert the Rights of Parliament: And he would show that none of these are Treason within 25 *Ed. 3.* That indeed, before this Statute, at Common Law Treasons were so general and uncertain, that almost any Crime, by Inferences and Constructions, was made to amount to High Treason; as killing the King's Messenger was adjudg'd to be Treason; and in the Reign of *Ed. 2.* the Case of the Earl of *Lancaster* for being over popular, and of *Spencer* for being over gracious, these Things had been construed Treasons; and the Sense of these and other Mischiefs, occasion'd by the Uncertainty of Treason, produc'd that Statute of 25 *Ed. 3.* And this Law has in all Times been the Rule to judge of Treasons, even in Parliament; and therefore in the Parliament-Roll, 1 *Hen. 4.* N^o. 144. the Tryal and Judgment in Impeachments of Treason, the Commons pray might be according to the antient Laws: And in the Parliament-Roll, 5 *Hen. 4.* N^o. 12. In the Case of the Earl of *Northumberland*, the Statute 25 *Ed. 3.* was the Rule by which the Lords judged that Case was not Treason, when it was endeavour'd to make his Offence amount to Treason. And 'twas observable, that tho' the Necessities of some Times had occasion'd several other Things to be made Treason, yet they all return'd and fix'd this Statute as the Boundary of Treason at last; and by 1 *Mar. 1.* no other Offence was left to be adjudg'd Treason, but what was declar'd to be so by 25 *Ed. 3.* And from 1 *Hen. 4.* to Queen *Mary*, there was not any Judgment to be found given in Parliament for any Treason not declar'd such by 25 *Ed. 3.* unless by an Act of Attainder.

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The Statute
25 *Ed. 3.* to be
taken strictly.

And he laid it down as a Ground, that this Act ought not to be construed by Equity or Inference; for 1. It was a Declarative Law, and no Declaration ought to be upon a Declaration. 2. It was a Law provided to secure the Subject in his Life, Liberty, and Estate; and to admit of Constructions and Inferences upon it, were to destroy the Security provided for by it. 3. It has been the constant Opinion of all Times, that this Act must be literally construed,

strued, and not by Inference and Illation; and as an Instance of this he show'd, that tho' Counterfeiting the Coin was by this Law declar'd Treason, yet Filing and Clipping was not held to be Treason, 'till it was made so by a special Act, 3 Hen. 5, 6. And Counterfeiting of foreign Coin made current here, tho' an equal Mischief with Counterfeiting the Coin of this Realm, was not held to be Treason, because the Words of the Statute are *his Money*, 'till another Act was made, 1 Mar. c. 6. to make it Treason.

He next proceeded to shew, that none of the Matters contained in the Articles were Treason; for 1. As to an Endeavour to subvert the Laws, that was not compriz'd within 25 Ed. 3. nor cou'd by any Construction or Inference be brought within it. 2. An Endeavour to subvert Laws was an Expression of so great Latitude and Uncertainty, that every Action, not warranted by Law, may thereby be extended to Treason: And he quoted the Sixth Report in *Mildmay's Case*, where a Conveyance was made in Tail, with a Proviso, that if he did *go about*, or *attempt*, to discontinue the Entail, the same should be void; and it was resolv'd, that this Proviso was void, for that the Words *go about*, or *attempt*, are Words uncertain, and so void in Law; and the Reporter on that Occasion has this Expression, viz. *God defend that Inheritances and Estates of Men shou'd depend upon such Uncertainties, for that misera est Servitas, ubi Jus est vagum, & quod non definitur in jure quod fit conatus*: And therefore the Rule of Law does decide this Point; *Non efficit conatus, nisi sequitur effectus*: And the Law does reject Conations and Goings about, as Things uncertain, which cannot be put in Issue: That these were the Words of the Book: And the Argument was of greater force in a Case of Life. And if it was objected, that this Law took notice of Compassing and Imagining, that related only to that Particular of Compassing the Death of the King: And that *an endeavouring to subvert Laws* was not by that or any other Statute declared Treason. That in all Times an Endeavouring to subvert the Laws has not been conceiv'd to be any determinate Crime, but has been usually joined as an Aggra-

The uncertainty
of the Word
Endeavour.

The Words to
go about, or *at-
tempt to do a
thing*, adjudg'd
void in a Con-
veyance for the
Uncertainty.

Aggravation, or Result of Crimes below Treason, as appear'd in the Parliament-Roll, 28 H. 6. N^o. 28. in the Case of the Duke of *Suffolk*; where the Commons, having prefer'd Articles of Treason against him, did not make that any part of his Charge; but afterwards preferring other Articles against him in the same Parliament, they therein charg'd all the Misprisions, Offences, and Deeds therein mentioned, to have been the Cause of the Subversion of Law and Justice, and the Execution thereof, and nigh likely to tend to the Destruction of the Realm; whereby it appears, they looked on this as a Crime of another Nature, and not Treason.

Card. *Woolsey* adjudg'd guilty only of a *Præmunire* for endeavouring to subvert the Laws.

That the Articles against Cardinal *Woolsey* exhibited in Parliament, 21 H. 8. for that he did endeavour to subvert *Antiquissimas Leges hujus Regni, universumq; hoc Regnum Angliæ Legibus Imperialibus subjugare*, were not held to amount to High Treason, and ended but in a *Præmunire*. As to the Endeavour to subvert Religion, that no more than the former Endeavour of subverting the Laws was Treason by any Law of this Kingdom: That before the Reformation, tho' any Endeavour to alter Religion was prosecuted with great Extremity, yet no such Attempt was conceiv'd to be Treason, but several special Acts of Parliament were made for punishing Persons, who shou'd attempt the Alteration thereof; as 5 R. 2. c. 5. 2 H. 5. c. 7. In the latter of which mention is made of endeavouring to destroy the *Christian Faith*; and yet such an Attempt was not declar'd to be Treason; and the Statutes of 1 Ed. 6. c. 12. and 1 Mar. c. 12. made it but Felony to attempt an Alteration of Religion, *even by Force*.

That as to an Endeavour to destroy the Rights of Parliament; in the Parliament 11. R. 2. when Articles were prefer'd against the Duke of *Ireland*, the fourteenth being of the same Nature, but far transcending this, when the Lords came to distinguish what was Treason, and what not, this Article was not held to be Treason.

That as to any particular Instances contain'd in the Articles, there were but two, which cou'd give any colour for capital Punishment: One in the tenth Original Article, That he hath traiterously endeavoured

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They shew, that none of the Particulars contain'd in the Articles are Treason.

endeavour'd to reconcile the Church of *England* with the Church of *Rome*; and if this was Treason, it must be by the 5 *Jac. c. 4.* which provides, that if any Man shall put in practice to reconcile any of his Majesty's Subjects to the See of *Rome*, it shall be Treason. But that is none of the Charge here; for that Statute says, *put in practice*, and here only an *Endeavour* is charg'd; and there it is the Reconciling a Subject of his Majesty's, here 'tis Reconciling the Church of *England* with the Church of *Rome*; and that may be as well by a Reducing that of *Rome* to *England*, as *England* to *Rome*.

The other Instance is in the Seventh Article, the Receiving and Harboursing Priests; but this relates only to such as are *English*-born, and those mention'd in the Article are Foreigners; neither is that Offence more than Felony by 27 *Eliz. c. 2.*

And that since none of the Articles appear'd to be Treason within the Letter of the Law, they cou'd not by Inferences, or Parity of Reason, be heightned to a Treason; and the Laws which distinguish Crimes, and give them their several Names, and inflict suitable Punishments, make none of the Facts charg'd amount to Treason; it was worthy their Lordships Consideration, whether their Number cou'd make them exceed their Nature: That if a Number of Misdemeanors, in themselves as Treason, shou'd by Complication produce a Treason, it were strange that the Statute of *Ed. 3.* which was made to ascertain Treasons, shou'd not mention the Number and Nature of those Crimes below Treason, that shou'd amount to Treason: That as to the Clause in that Statute, which seems to leave it in the Power of the Parliament to declare some Offences Treasons, that plainly extended only to such Crimes as were Felony at Common Law before: And besides, they were not now in the Case of a Declaration of Treason, but upon an Impeachment, and in such a Case he conceiv'd the Law already establish'd ought to be the Rule, as it had hitherto been.

His Grace takes notice, that soon after this Hearing a Petition was carried about *London* and the Suburbs for the bringing Delinquents to Justice;

The Number of Misdemeanors cannot alter their Nature.

The Mob petition the Parliament for Justice upon his Grace at the Instigation of their Preachers.

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and some Preachers exhorted the People to be zealous in it ; for that, they said, it would be for the Glory of God, and the Good of the Church ; and they got a Multitude of Hands, and deliver'd it to the House of Commons, *Octob. 28.* In the Petition none were named as Delinquents, but his Grace and the Bishop of *Ely* : And this Practice his Grace attributed to Mr. *Prynn*.

The House of Commons command his Grace to be brought before them.

Mr. *Brown* delivers a Summary of the Charge against him there.

His Grace is admitted to answer to it.

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Novemb. 1. A Warrant was sent to the Lieutenant of the Tower, from the House of Commons, to bring his Grace before them. His Grace observ'd, that tho' there was no Law that cou'd oblige him to attend the Commons, yet he shou'd have been carried by Force, if he had refus'd to go ; he submitted therefore, and on *Novemb. 2.* was brought before them. The Speaker acquainted him, as soon as he appear'd at the Bar, that there was an Ordinance drawn up to attaint him of High Treason, but they wou'd not pass it, 'till they had heard a Summary of the Charge against him, and they had sent for him to hear it too. His Grace desir'd his Council and Sollicitor might stand by him, as they had done in the House of Lords, but it was denied : Then Mr. *Brown* summ'd up the Evidence, and made his Observations in the same manner he had done in the Lords House : After which Mr. Speaker press'd his Grace to answer immediately, but at length his Grace obtain'd 'till *Monday* Seven-night after to reply to Mr. *Brown*.

Monday, Novemb. 11. 1644, his Grace was brought to the House of Commons. He told them, he was come by their Appointment to make a brief Answer to that Summary of the Charge against him, which Mr. *Brown* had deliver'd ; and altho' Mr. *Brown*, in Duty to the House, had press'd Things home against him, yet he acknowledg'd his Expressions had been civil towards him, for which he return'd him Thanks ; having, from other Hands, pledg'd his Saviour in Gall and Vinegar, and drunk up the Cup of the Scornings of the People to the very Bottom --- As to Mr. *Brown's* Answer to his first Complaint, where he says, *That tho' he had lain three Years in Prison before he was heard,* it was his own Fault, because he delay'd putting in his Answer, when he

was

was call'd upon: His Grace reply'd, he was not call'd upon for an Answer; neither cou'd he answer to all the Articles, they not being exhibited (some of them) till of late: And as the Times were, neither his Council or Friends wou'd advise him to petition for a Hearing ----- As to his second Complaint, *of his Papers being seiz'd*, tho' Mr. Brown said, that was done by Authority, and that his Grace had seiz'd the Papers of others without Authority; his Grace said, he had never caus'd any Papers to be seiz'd, but by the Authority of the Court, where he sat; and what he complain'd of in this Case was the seizing of those Papers he had prepar'd for his Defence, and which were not restor'd when he needed them, and petition'd for them. And altho' to his third Complaint, *that the Witnesses were Separatists*, Mr. Brown answer'd, some of them were Aldermen, and Men of Quality; his Grace reply'd, that he found Men of all Conditions were Separatists from the Church of *England* now, and he wish'd to God some of his Judges were not; and he must still insist, that some of the Witnesses cou'd not be deem'd legal Witnesses, having been brought before him, when he sat as Judge in the Star-Chamber, Council-Table, and High-Commission, and convicted and punish'd for their Crimes in those Courts; and it was highly improbable, that Witnesses so prejudic'd cou'd be indifferent in their Testimony; for now, upon the Matter, they became Judges of him, who had judg'd them. — Then his Grace proceeded briefly to answer the Charge, as Mr. Brown had summ'd it up against him; *which being but Minutes of what his Grace had urg'd before in his Defence, it does not consist with the design'd Brevity of this Work to repeat it here.* When his Grace had gone over the respective Heads of the Charge, he observ'd, that altho' Mr. Brown, who had summ'd up the Evidence against him before the Commons, was a very able Man, yet they had not heard the Evidence upon Oath, as the Lords had; and what was represented to them was but the Collection of one Man's Judgment, how able soever he might be thought; and they had only his Judgment, what he conceiv'd had been prov'd against him, which might possibly

differ much from the Opinion and Judgment of the Judges themselves, who heard the Evidence at large. That besides, Mr. *Brown* was absent several Days when his Grace was heard; and for those Days, he could only report to the Commons what had been reported to him; so that much of his Repetition contain'd no more than a Report of a Report of the Evidence that was given, and that not upon Oath. And never any Jurors, who were Tryers of a Fact, either in a criminal or civil Case, did ever found their Verdict upon an Evidence only reported to them, which they did not hear themselves; and what might be the Consequence of such a Proceeding, he thought deserved their Consideration. He desir'd, however, that his Council might be heard, as to that Point, whether all or any of the Particulars he was charg'd with amounted to High-Treason; and left it to them, whether they would think it just and honourable to judge him in that House, when he had been impeach'd by them, and pleaded, and Issue join'd, and Evidence given in upon Oath in another Place; whether, after this, they would think it fit to judge him in their own House, and that only upon a Report or Hearsay, without any Oath made before them.

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His Grace seems to object to his Accusers becoming his Judges, and that without hearing the Evidence against him.

Mr. *Brown* replies to his Grace.

The House of Commons pass his Attainder.

His Grace was order'd to attend the House of Commons again on *Wednesday* the 14th of *November*, which he did, and then Mr. *Brown* made a Reply, which his Grace observ'd, was, for the most part, only an affirming what he had deliver'd before, except some great Mistakes in it. To this his Grace was not permitted to answer again; but as soon as he was remanded, the House call'd for the Ordinance that was drawn up against him; and without hearing Council, or further Consideration, voted him guilty of High-Treason. And on *Saturday*, *November* 16, they pass'd the Ordinance and sent it up to the Lords, who put off the Debate concerning it to *Friday*, *November* 22; where it seems, among other ill Language the Earl of *Pembroke* bestow'd upon his Grace, he call'd him *Rascal* and *Villain*; and ask'd the Lords if they design'd

not

not to assent to the Ordinance till the Citizens came and call'd for Justice, as they did in my Lord *Strafford's* Case: However, the Debate was adjourn'd to the 23d, and from thence to the 29th; but upon the 28th Mr. *Stroud* came up with a Message from the Commons to quicken them, and told them *they would do well to agree to the Ordinance, or else the Multitude would come down and force them to it*; but when some of the Lords seem'd to resent this Threatning, Mr. *Stroud* would not abide by it, that it was any Part of his Message.

The Commons threaten the Lords to induce them to pass the Ordinance for his Attainder.

After several Debates, on Tuesday, December the 17th (there being fourteen Lords present) his Grace was voted guilty of endeavouring to subvert the Laws, the Protestant Religion, and the Rights of Parliaments. But the Question being put to the Judges, whether these Facts amounted to Treason: The Judges unanimously declar'd, that these Facts did not amount to High-Treason by any Law in being.

The Lords agree, as to the Facts, but the Judges declare there was no Treason in the Articles.

On the 24th of December (*Christmas Eve*) the Lords, at a Conference with the Commons, declar'd, that having weigh'd Matters, they could not find that all or any of the Matters charg'd amounted to High-Treason; and desir'd the Argument made by his Grace's Council might be answer'd.

The Lords of Opinion there was no Treason in them.

The next Day, being *Christmas Day*, was kept as a Fast, and a solemn Ordinance issued for the strict Observance of it as a Fast, and against the keeping of it as in the former superstitious Times —

Christmas Day enjoin'd to be kept as a Fast.

January the Second, the Commons sent a Committee of their House to the Lords, to endeavour to make out the High-Treason they had charg'd his Grace with; the Managers were Mr. *Brown*, Serjeant *Wilde* and Mr. *Nicholas*; but neither his Grace or his Council permitted to be there —

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On the Fourth of January the Lords pass'd the Ordinance for his Attainder; and on the Sixth it was order'd by both Houses he should suffer as a Traytor on Friday the Tenth of January.

The Lords pass the Ordinance of Attainder.

On the Seventh the Lords acquainted the Commons with a Pardon his Grace had obtain'd from the King, but 'twas rejected: His Grace petition'd

He has a Pardon from the King, which is rejected,

then, if he must die, that the Execution might be chang'd to beheading, and that his three Chaplains might attend him, Dr. *Stern*, Dr. *Heywood* and Dr. *Martin*, in his Preparation for Death. The Commons at length agreed with the Lords, as to his being beheaded, but would admit only Dr. *Stern* to be with him, and that only in the Presence of Mr. *Marshall* and *Palmer*, two of their own Preachers. And on the Tenth of *January* he was beheaded on *Tower-hill*.

Allow'd but one Chaplain to attend him, and him in the Presence of a Presbyterian Teacher.

He is beheaded.

Practices of the Commons to prevail with the Lords to pass the Ordinance.

But seven Lords present at the passing the Ordinance.

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Dr. *Heylin* observes, there was a great deal of Management used by the Commons to induce the Lords to comply with them in passing the Ordinance against his Grace. First they prepar'd an Ordinance and sent it up to the Lords, importing the displacing them from all those Places of Power and Command they had in the Army: Then they fell upon a Project to bring the Lords to sit in the Commons House; and to effect it, they had recourse to their old Arts, drawing down *Watkins* and his Mob, who tender'd a Petition to the House with numerous Subscriptions, requiring that they should vigorously proceed to the Punishment of all Delinquents; and that for the better Dispatch of publick Business, the Lords would please to vote and sit with the Commons; and by such Arts as these, some being induc'd to comply, and others withdrawing themselves, the Ordinance was pass'd, not above seven Lords being present, viz. *Bruce*, *Kent*, *Pembroke*, *Salisbury*, *Bolingbroke*, *North*, and the Lord *Gray of Werk*. But Dr. *Heylin* says, the Lord *Bruce* has often disclaim'd the Action, and solemnly profess'd his Detestation of the whole Proceedings.



*The Tryal of CONNOR Lord MACGUIRE
for High-Treason, at the King's-Bench-
Bar, February 10, the 20th of Car. I.
1644.*

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THE Indictment set forth, " That the said
" Connor Macguire (together with Philip O Neale,
" Philip O Relly, Roger Moore Esq; Roger Macguire Esq;
" Toole O Coule, Priest, Hugh Macmahone, &c) not
" having the Fear of God before his Eyes, &c. did,
" on the 20th of October, in the 17th of Car. I. at
" Dublin in the Kingdom of Ireland, maliciously and
" traiterously conspire, compass, and imagine to
" depose and bring the King to Death, and raise
" Rebellion, &c. And to accomplish his said Trea-
" sons, he did, at the Day and Place abovesaid,
" send the said Toole O Coule, and divers other Mes-
" sengers, unto Philip O Neale in Flanders, to incite
" him to levy an Army there, and therewith invade
" the said Kingdom of Ireland. And that the said
" Connor Macguire, together with the said other
" Traytors, at the Time and Place aforesaid, did
" traiterously contrive to seize the Castle of Dublin,
" and his Majesty's other Forts and Magazines in
" that Kingdom.

Indictment of
High-Treason.

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Overt Acts.
The Rebellion
and Massacre in
Ireland.

And the Indictment further sets forth, " That
" the said Connor Macguire, with the said other
" Traytors, on the 22d of October, 17 Car. at Char-
" lemont, in the said Kingdom, with a great Mul-
" titude arm'd and array'd in warlike Manner, did
" levy open War against his Majesty, and surpriz'd
" the Castle of Charlemont aforesaid, and did then
" and there kill Toby Lord Calfield, Francis Davis,
" and others of the King's Subjects that were Pro-
" testants: And that the Prisoner, with the said
" other Traytors, did also on the 4th of June, 18
" Car. surprize and seize the Castles of Keilagh and
" Cragan, and kill and murder Owen Powell, William
" Cosens, and many other of the King's Protestant
" Subjects there; all which is laid to be against
" the Duty of his Allegiance, the King's Peace,
" &c.

The Prisoner
pleads he is a
Peer of Ireland.

The Prisoner pleaded his Peerage to the Jurisdiction of the Court; and shew'd, that by the Statute of *Magna Charta*, 9 Henry III, none ought to be try'd but by their Peers; that by the 10th of Henry VII, the Statutes of *England* were introduc'd in *Ireland*. That before the Time of the several Treasons alledg'd, *Bryan Macguire*, the Prisoner's Father, was made Baron of *Enniskillen* in *Ireland*, to him and the Heirs Males of his Body; and being so seiz'd of the Barony in Fee-tail February 1, Car. 12, he died, and the Barony descended to the Prisoner; and that he sat as a Baron of *Ireland* in the Parliament there, in the 16th Year of the King; and pray'd that he might be try'd and adjudg'd by his Peers in *Ireland*.

His Plea is over-
rul'd.

To this Plea the King's Council demur'd; and Mr. Justice *Bacon* over-rul'd the Plea, and declar'd, That a Baron of *Ireland* was triable by a Jury in *England*; and this Resolution of Mr. Justice *Bacon*'s was confirm'd by both Houses of Parliament; whereupon my Lord *Macguire* was arraign'd at the King's-Bench-Bar upon the 10th of February; and having pleaded *Not Guilty*, he desir'd time till next Term to bring his Witnesses from *Ireland*, not expecting to be try'd here. But he was told he had had time enough; and the Court said, the Lord *Grey*, who was Deputy of *Ireland*, and try'd here for Treasons committed there, was deny'd time to send for his Witnesses from *Ireland*. Then the Jurors were call'd, and the Prisoner challeng'd 23 peremptorily, which were all that appear'd but one; whereupon Mr. Serjeant *Whitfield* mov'd the Court that they might have Process issu'd for another Jury returnable the next Day: He said they had several Precedents for it, and that the Course in such Cases was to issue a Writ to the Sheriff, to distrain those that made default; and that he should remove those that were challeng'd by the Prisoner, and return so many more for the Tryal. Serjeant *Roll* affirm'd that this was practis'd in *Standish's Case* and *Friar's Case*.

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He pleads *Not Guilty*.

The Lord *Grey*
try'd in Eng-
land for Treas-
ons committed
in *Ireland*.

The Prisoner
challenges all
the Jurors that
appear but one.

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A *Distringas*
and *Tales* made
returnable the
next Day.

Court. We know the Court may grant a *Tales*; but the Question is, whether the Sheriff can return it so soon as to morrow.

Ser-

Serjeant Whitfield. We find in the Case of *Friar*, 3 *Henry VII*, that the Jury appear'd on the *Friday*, and all that appear'd were challeng'd, and there was a *Distringas* returnable the next Day; and it may be *immediate*.

Court. Then make your *Distringas* against to morrow Morning; make out a *Quadraginta* Tales against to morrow.

Lord Macguire. I hope I shall not be so severely dealt with.

Court. It has been so often times: The Court does proceed *de die in diem* in these Cases. And a Rule was made to the *Lieutenant of the Tower* to bring his Prisoner again the next Day.

Tuesday, February 12. The Lord Macguire was brought to the *King's-Bench-Bar* again.

His Lordship desir'd to appeal to the House of Lords, as to his Peerage, but was told he had put himself upon the Country, and must now take his Tryal here. Then the Jurors being call'd, his Lordship challeng'd as many as made up 35 with what he had challeng'd the Day before; and said, he hop'd it was a good Cause of Challenge against any of the rest, if they had purchas'd the forfeited Estates in *Ireland*, for that his Lordship's having a possibility of being forfeited, such Persons seem'd interested in the Event of the Cause; and this the Court held to be a good Cause of Challenge.

Where a Juror has a possibility of an Interest in the Event of the Cause, a good Cause of Challenge.

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At length a Jury was sworn, and charg'd with the Prisoner; and the Council having open'd the Indictment, &c. the Witnesses were call'd. And first,

Sir William Cole was sworn.

He depos'd, That my Lord Macguire, and the rest of the Conspirators named in the Indictment, were all Papists.

The Witness call'd.

Sir Francis Hamilton call'd.

He depos'd, That he was a Member of the House of Commons in *Ireland*; and that there came a Message from the Lords, to acquaint them that there was some Plot for blowing up the Parliament-House, and desir'd a Search might be made, and

and a Search was made accordingly; and that my Lord *Macguire* was one of the Committee of Lords employ'd to search; and that afterwards they desir'd to search the Castle of *Dublin*, and other Magazines.

Council. What was the Occasion?

Sir Francis Hamilton. A Coachman of my Lord *Strafford's* had given out, that the Parliament should be blown up; but I believe the Design was to discover where the Stores and Ammunition lay, that they might surprize it.

Sir William Steward call'd.

He depos'd also, That my Lord *Macguire* was one of the Committee of Lords who made the Search; and that they were very inquisitive where the Stores were.

The Lord Blaney call'd.

He depos'd, That this Search was about a Fortnight after the Lord *Strafford* was beheaded; and it was said to be occasion'd by my Lord *Strafford's* Coachman's wishing he might see some of the Lords blown up; but he believ'd it was to discover their Strength; and that my Lord *Fingal* and *Clamorris* (one of whom propos'd this Search) were Papists.

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The Examination of a Witness read, who might have been produc'd *viva voce.*

Evidence of my Lord *Macguire's* being taken in *Dublin* with Arms, &c. the very Morning the Massacre begun in the other Parts of *Ireland.*

Then the Examination of *John Woodcock*, who was Sheriff of *Dublin* in the Year 1641, taken before Mr. Justice *Bacon*, was read [N. B. This Witness was in London just before, and permitted to return home.]

He depos'd, That upon the 22d of October, 1641, having Notice of some great Design, he walk'd about the Streets of *Dublin*; and understanding that my Lord *Macguire*, and Ten or Twelve more, were at the House of one *Nevil*, the Deponent told *Nevil* it was time his Guests were in Bed; and *Nevil* brought the Deponent word they were going to Bed. That the Watch afterwards inform'd the Deponent that my Lord *Macguire*, and his Company, were gone from that House, and went to one *Kerne* a Taylor's; whereupon the Deponent went and search'd *Kerne's* House, and found some Hatchets, Petards, five or six Swords, and four or five

five small Pistols, with other Arms of the Lord Macguire's, which he carried to the Lords Justices and Council in Ireland; and searching further, he found my Lord Macguire in a Cockloft, with a Cloak wrap'd about him; and that the Master of the House fled away to the Enemy.

The Lord Macguire's own Confession read, which was taken by Charles Lord Lambert, and Sir Robert Meredith, by the Order of the Lords Justices in Ireland the 26th of March, 1642.

This Examinant saith, That Roger Moore acquainted him (at the time that Mr. Bellew came out of England, with a Commission for the Continuance of the Parliament) That if the Irish would rise, they might make their own Conditions for regaining their Lands and a Freedom of their Religion; that he was assured several in *Lemster* and *Connaught* would rise, and mov'd the Examinant to do the like, to which Motion the Examinant yielded: And that the next Day there was a Consult at the said Moore's Chamber in *Dublin*, between Colonel *Mac-Bryan*, *Macmahone*, the Examinant, *Roger Moore*, &c. and there 'twas agreed they should go and prepare their respective Parties. That about May last, they dispatch'd *Toole O Coule* to *Flanders*, to *Owen O Neale*, to acquaint him with the Design of a general Rebellion; and *Toole O Coule* brought Word again, that *O Neale* would be with them within fifteen Days after the People were up, with his best Assistance and Arms. And the Examinant further acknowledg'd, that the Castle of *Dublin* was intended to be surpriz'd by them: And that *Roger Moore* told the Examinant that a great Man was in the Plot, whom he might not name at present.

Macguire's own Confession of his being concern'd in the Conspiracy.

Another Examination of the Prisoner's, taken before the Lord Chief Justice *Bramston*, the 24th of June 1642, was read, wherein he acknowledges the abovesaid Examination was true.

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A Third Examination of the Prisoner's, taken before *Isaac Pennington*, Esq; Lieutenant of the Tower, and *Laurence Whitaker*, another Justice of Peace

His Examination in the Tower read against him.

Peace for *Middlesex*, the first of *October* 1644, was read.

Denies they had any Messages from *England* to incite them to this Rebellion.

The Examinant denies he knew of any Letters, or Messages, sent from *England* before the Rebellion; says he was but a mean Instrument in the Design of *Ireland*; confesses he did design to seize the Castle of *Dublin*, and the Magazine there, and keep it till their Grievances were redress'd, which they purpos'd to propound to the Parliament; one whereof was to have a Toleration of their Religion: That his Intention in coming to *Dublin* was to put the aforesaid Design in Execution, (and that they had then a Consult about it) which Design was to have been put in Execution *Oct.* 23. 1641, but that he was taken that very Day, and carried before the Lords Justices and committed, and afterwards sent over to *England*; and saith further, that he made his Escape out of the Tower the 18th of *August* last.

John Carmick was sworn.

Evidence of the Discovery of the Conspiracy.

He depos'd, That upon *Octob.* 21. 1641, *Fergus O Howen*, one of the Followers of *Bryan Macguire Esq;* came to his Chamber in the Castle of *Enniskillen*, and conjuring the Deponent to be secret and to conceal what he was about to communicate to him, especially from *Sir William Cole* and all other *Englishmen*, he discover'd to the Deponent, that the Lord *Macguire* and *Hugh Macmahone*, accompanied by several others, went to *Dublin* out of the Country the 19th and 20th Days of *October*, 1641, with an Intent to kill the Lords Justices and Council, and the rest of the Protestants there, and to possess themselves of the City of *Dublin*; and to that end several other Great Men and Papists were to meet them at *Dublin Oct.* 23. And that at the same time all the Castles and Sea-Ports in the Kingdom were to be seiz'd by the *Irish* Papists, and all the Protestants therein would be put to the Sword, and especially those of the Town and Castle of *Enniskillen*, and therefore advis'd the Deponent to get himself and his Goods out of the Town: That *Fergus* being gone, the Deponent immediately acquainted *Sir William Cole* with what he said, and at the same time

time came in one *Flartagh Machugh*, and gave Sir *William* the same Account of the Plot; and that thereupon Sir *Wil. Cole* advertis'd the Lords-Justices and Council of it. — The Deponent also produc'd a Letter, written in *Irish*, from the Lord *Macguire* to his Cousin *Bryan Macguire*, wherein he expresses his Concern that *Bryan* should be inclin'd to the *English*, and tells him it might prove destructive to him, as he believ'd it would be to all those, who did not appear.

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He further depos'd, That upon *Octob. 29. 1641*, Capt. *Rori Macguire* took several Castles, to the number of twenty two, strip'd and disarm'd the Protestants, and some he kill'd; burnt the Church of *Monah* with Eighteen Protestants in it: That seven hundred and sixty four Protestants were destroy'd in the County where the Deponent liv'd; and he heard there were one hundred and fifty two thousand destroy'd in the Province of *Ulster* in the first four Months of the Rebellion.

Sir *William Cole* being call'd and sworn, confirm'd *Carmick's* Testimony.

Sir *William Steward* was call'd.

He depos'd, That *Con Owen O Neale* landed in *July* in the Year of the Rebellion, and brought several Commanders, as well as Arms and Ammunition with him, and that nine of his principal Officers were taken in one Battle.

Evidence of
O Neale's landing in *Ireland*.

Lady *Calfield* was call'd.

She depos'd, that on *October 23. 1641*, Sir *Phelim O Neale, &c.* surpriz'd the Castle of *Charlemont*, murder'd her Son the Lord *Calfield*, and several of his Servants; and others of them they bound and shut up in Prison — That Sir *Phel. O Neale* then told the Deponent, that he was sorry for his Cousin the Lord *Macguire*, for he was afraid he was taken.

Charlemont surpriz'd by the *Irish* Papists, and the Lord *Calfield* murder'd.

Mrs. *Mary Wordrofe* was call'd.

She depos'd, That about eleven or twelve at Night Sir *Phelim O Neale* broke into the Castle and surpriz'd it, and murder'd the Lord *Calfield*, *Francis Davis*, and others.

Sir

Sir Francis Hamilton and Walter Gubson were call'd.

They depos'd, That the Rebels besieg'd Guile and Crogan Castles a Quarter of a Year together, and had sometimes two, sometimes three thousand, and never less than fifteen hundred Men before them.

Sir Charles Coote was call'd.

He depos'd, That Sir Phelim O Neale and Roger Moore were principal Actors in this Massacre, and that they sent in a particular Account of those who were murder'd in the Province of Ulster, and it amounted to one hundred and four thousand and seven hundred in the first three Months of the Rebellion.

Evidence of
104700 murder'd.

The Conspira-
tors set up a
new Form of
Government.

He depos'd further, that they set up a new Form of Government by a Supreme Council, and made Judges, and coin'd Money, &c. in their own Names; and that they granted the Rents of certain Lands to the Lady Macguire, in Recompence for her Lord's Loss.

Then a Copy of the Pope's Bull was read:

The Pope's Bull
to the Irish Pa-
pists concern'd
in the Rebellion.
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Ad futuram Rei Memoriam. Urbanus Octavus, &c.

It Recites, " That having taken into his seri-
ous Consideration the great Zeal of the Irish to-
wards the propagating of the Catholick Faith;
which Kingdom (for their singular Fervency in
the true Worship of God) was of old called
The Land of Saints: And having certain Notice,
that, in Imitation of their Godly and Worthy
Ancestors, they endeavour'd by Force of Arms
to deliver their thrall'd Nation from the Op-
pressions of the Hereticks, and to extirpate
those Workers of Iniquity, who had infected the
Mass of Catholick Purity with the pestiferous
Leaven of their Heretical Contagion: By Virtue
of his Power of Binding and Loosing, which
God had confer'd upon him; To all and every
the aforesaid Christians in the Kingdom of Ire-
land, so long as they should militate against the
said Hereticks, and other Enemies of the Ca-
tholick Faith, he did grant a full and plenary
Indul-

“ Indulgence, and Absolute Remission of all their
 “ Sins, desiring all of them to be Partakers of this
 “ most precious Treasure, &c.

Grants them
 full Remission
 of their Sins.

*Dated from the Vatican, or St. Peter's
 Palace in Rome, May 25. 1643, and
 in the twentieth Year of his Pontificate.*

The Lord Macguire in his Defence denied he knew of any such Examinations as had been produced against him; and said, that at the time of his Apprehension in *Dublin* he was about his particular Affairs, taking care of his Estate which was in Danger: And that, as to the Number of Protestants mentioned to be slain, he did not believe there were so many in the Kingdom; and as to the Evidence of the Murders and Outrages that were committed by others, it did not affect him; he knew nothing of the Plot, but by Hearsay.

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The Lord Macguire in his Defence denies he made any such Confessions as were produc'd against him.

Mr. Serj. *Whitfield* reply'd, That his Lordship was one of the Conspirators by his own Confession, which made him Guilty in Law of all those cruel Murders and Burnings, that were consequent thereupon; that his Son was actually concern'd in them, his Lady rewarded by the Supreme-Council for what had been taken from him, and that my Lord *Calfield* was offer'd by the Rebels to be exchange'd for the Prisoner; which not being comply'd with, his Lordship was murder'd: And upon the whole he held, that the Indictment was fully made out.

The Council
 reply to him.

Then the Court having summ'd up the Evidence, the Jury withdrew, and after a short Recess brought the Prisoner in Guilty.

The Lord Macguire is convicted.

It being demanded of the Prisoner, what he had to say why Sentence of Death should not be pronounc'd against him, he again stood upon his Peerage, and demanded by what Authority the Court sat, whether their Commission was under the New or the Old Seal.

Demands by
 what Authority
 the Court sat.

One of the Justices answer'd, He was made a Judge by the Old Seal, and continued by the Parliament;

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Sentence pass'd.

liament ; that his Lordship had been allow'd Council to argue his Plea of Peerage, and had had a fair Tryal ; and therefore if he had nothing more to say, he must pronounce Sentence : And accordingly he proceeded to pass Sentence on the Lord Macguire, as a Traytor.

Petitions to be beheaded, but is executed as a Common Traytor.

My Lord prefer'd a Petition to the House of Commons, that the Execution of the Sentence might be alter'd to Beheading ; but his Petition was rejected ; and he was executed at Tyburn on Thursday, Febr. 20. 1644, being drawn, hang'd and quarter'd, as a Commoner.

*End of the First Part of the
First Volume.*



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